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VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 9

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

ALABAMA.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

PETITION FOR CERTIORARI FILED OCTOBER 22, 1963
CERTIORARI GRANTED JANUARY 6, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 575

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

ALABAMA.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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[fol. 1]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama vs. Ralph D. Abernathy, Defendant.

IN COURT OF COMMON PLEAS, MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler, who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one Ralph D. Abernathy did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II. Ralph D. Abernathy did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me this 25 day of May, 1961.

Alex A. Marks, Judge.

IN COURT OF COMMON PLEAS, MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting:

You are hereby commanded to arrest Ralph D. Abernathy and bring him before the Judge of the Court of Common [fol. 2] Pleas of Montgomery to answer the State of Alabama on a charge of Count I. Disorderly Conduct (T 14, Sec. 119 (1) Count II Unlawfully Assembly (T 14, Sec 407) and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

IN THE COURT OF COMMON PLEAS, MONTGOMERY COUNTY, ALABAMA

No. 22,744

THE STATE,

VS.

RALPH D. ABERNATHY.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

Charge: Disorderly Conduct, Unlawful Assembly.

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton, Roland Sevigny, Ralph D. Porch.

5/25/61 Warrant issued and delivered to sheriff.

5/25/61 Warrant executed by arresting the defendant and committing him to jail (or releasing him on bond).

5/29/61 Bond $1,000.00 approved and filed. Sureties

9/15/61 Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution, and in addition to above fine and costs, ten (10) days in County Jail.

Defendant appealed to the present term of the Circuit Court and bond fixed at $.....

Appeal Bond $..... approved and filed. Sureties.

Also Four (4) Motions as Follows:

August 11, 1961 for continuance "denied"—September 15, 1961 to quash, "Denied"

September 15, 1961 Demurrer, "denied"

September 15, 1961 to exclude evidence "denied"

Bill of Cost.

Clerk's Fees	$ 4.25
Solicitor's Fees	10.00
Mileage	24.00
Sheriff's fees	15.25
Library Fee	.50
Witness fees	3.50
	$57.50

Clerk's Certificate to transcript (omitted in printing).

[fol. 3]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

No. 185

STATE OF ALABAMA,

vs.

RALPH D. ABERNATHY, alias
RALPH DAVID ABERNATHY,

(DC and Unlawful Assembly).

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count I. Ralph D. Abernathy, alias Ralph David Abernathy, whose name is to the affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did [fol. 4] wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: Ralph D. Abernathy, alias Ralph David Abernathy, whose name is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek

service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 6]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

v.

RALPH D. ABERNATHY.

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit, and the complaint in this cause and held the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, as a Negro and a citizen of the United States, accompanied by the others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama; At the time of his arrest defendant was seated at the lunch counter in the company of others of both Negro and White races, in the bus terminal waiting room designated "white". The bus terminal is leased by

several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After seating himself at the lunch counter with his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler, of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Ralph D. Abernathy did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. COUNT II. Ralph D. Abernathy did meet with two or more persons to commit a breach of peace or to do an unlawful act."

[fol. 7] That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could

be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1. violates defendant's privilege and immunity of freedom to travel and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2. violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3. violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States.

4. violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5. violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6. violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7. denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without

racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., pp316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, pp 8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause, (Article 1, pp8) of the Constitution of the United States.

[fol. 8] 8. it affirmatively appears from the warrant, Affidavit and the complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9. it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof, (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut; Attorneys for Defendant.

[fol. 9]

EXHIBIT "A" TO MOTION

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION No. 1724—N

JOHN R. LEWIS, PAUL E. BROOKS, LUCRETIA R. COLLINS, RUDOLPH GRAHAM, CATHERINE BURKS, MATTHEW PETWAY, RALPH D. ABERNATHY, and others similarly situated, Plaintiffs,

vs.

SOUTHEASTERN GREYHOUND LINES, a Division of the Greyhound Corporation; CAPITAL MOTOR LINES, INC.; CONTINENTAL CRESCENT LINES, INC.; EARL JAMES, L. B. SULLIVAN, and FRANK PARKS, individually and as members of the Board of Commissioners of the City of Mont-

gomery, Alabama; and GOODWIN J. RUPPENTHAL, individually and as Chief of Police of the City of Montgomery, Alabama; MACDONALD GALLION, individually and as Attorney General of the State of Alabama; and C. C. (JACK) OWEN, J. S. FOSTER and SYBIL POOL, individually and as members of the Alabama Public Service Commission; MAC SIM BUTLER, individually and as Sheriff of Montgomery, Alabama; and WILLIAM F. THETFORD, individually and as Solicitor for the Fifteenth Judicial Circuit of Alabama, Defendants,

GEORGE SMITH, JOSEPH CHARLES JONES, WYATT T. WALKER, BERNARD LEE, FRED L. SHUTTLESWORTH and CLYDE CARTER; WILLIAM S. COFFIN, JOHN MAGUIRE, DAVID SWIFT and GAYLORD NOICE, Intervenors.

Before Hon. Frank M. Johnson, Jr., Judge at Montgomery, Alabama, September 5-6, 1961.

(NOTE: This is an excerpt transcript; see note on page three for contents.)

Clyde Henderson,
Official Court Reporter.

APPEARANCES:

For the Plaintiffs and Intervenors:

Fred D. Gray,
S. S. Seay, Jr.
Charles S. Conley,
Louis H. Pollak, and
Jack Greenberg.

For the Greyhound Corporation, Capital Motor Lines, Inc. and Continental Crescent Lines:

Hill, Hill, Stovall & Carter
(James J. Carter).

For Earl James, L. B. Sullivan and Frank Parks:

Calvin M. Whitesell

[fol. 10] For MacDonald Gallion:

MacDonald Gallion
Willard W. Livingston
Gordon Madison and
Leslie Hall.

For C. C. Jack Owen, J. S. Foster and Sibyl Pool:

Taylor Hardin and
W. F. Black.

For Mac Sim Butler:

Hill, Robison and Belser,
(Vaughn Hill Robison and
Joseph D. Phelps).

For William F. Thetford:

Jones, Murray and Stewart
(Robert B. Stewart and
R. E. Varner)

As Amicus Curiae:

John Doar.

(Note: This transcript is an excerpt transcript containing motion made on behalf of William F. Thetford at close of Plaintiff's presentation of evidence in trial of above case, together with ruling by the Court thereon and remarks pertinent thereto.)

Mr. Stewart: Yes, Sir. On behalf of the defendant, William F. Thetford, we move to dismiss the action on the ground that under the facts and the law, the plaintiffs and the intervenors have shown no right to relief sought against this defendant— Bob, would you give that to the Clerk. May we comment briefly on that? The complaint states that these actions are contrived and calculated to enforce racial segregation on the buses and in the bus terminals. The evidence of the plaintiffs, themselves, shows what one of them characterized as an explosive situation. It shows they knew,

what they were coming into when they came here, and they knew about the violence; they knew what was likely to happen. The evidence showed that almost to a man they were financed by others, by people who are intermeddlers in our local situation. They, it might be said, contrived and calculated to provoke a breach of the peace. Now, your honor has asked us to file—and I am not going to speak at length on it—a memorandum, and I have done so; but I do say that I do not feel the evidence shows the kind of a situation under the evidence as it now stands, which would justify this court to issue an injunction against the solicitor.

The Court: The prayer for relief, as I understand the pleadings in this case, as it relates to Thetford, seeks to have this court enjoin the prosecution of certain enumerated and designated cases, beginning with George Smith and ending with, by the amendment offered this morning, Abernathy; is that correct; eleven of them?

[fol. 11] Mr. Gray: Yes, Sir.

The Court: That is one phase of it. Another phase of the case as it relates to Thetford concerns the future prosecution; is that your understanding of it?

Mr. Stewart: No, sir; I do not. I do not understand that he is—they have asked you to enjoin future prosecution by the solicitor; it may be that I have misread the complaint.

The Court: Let me—let me read it again. What relief other than asking the court to enjoin the prosecution of the eleven cases do you ask as to Thetford, you gentlemen representing the plaintiffs and the intervenors?

Mr. Gray: Your honor, I believe we also asked that he be enjoined from doing any acts which would subvert the authority in the case of Browder versus Gayle, under these cases, or any other, and we particularly mention these particular cases—

Mr. Stewart: Where is that in the complaint?

The Court: Is that in your original complaint, your amended complaint, or your supplemental complaint?

Mr. Gray: Supplemental complaint, page three, the last part of it, "And otherwise to interfere with the jurisdiction of this Court in Browder versus Gayle and the instant case."

Mr. Stewart: Where in the supplemental complaint?

Mr. Gray: Beg your pardon?

Mr. Stewart: Where in the supplemental complaint?

Mr. Gray: The last paragraph, page three of the supplemental complaint, and the last page in intervenors' complaint.

Mr. Stewart: Point out to me, where on page three?

Mr. Gray: The last phrase of that says, "And otherwise to interefere with the jurisdiction of this court in Browder versus Gayle and the instant case"; and we think the language there, and the language on page six of the intervenor's complaint is broad enough to enjoin any future action, or to ask for relief against any future action on the part of the solicitor where he seeks to enforce criminal statutes—where he seeks to enforce segregation of the races on these facilities by the use of criminal statutes.

Mr. Stewart: It is too—too vague a wording of the prayer to ask for an injunction against all future proceedings of this kind, your honor; we have never so construed the pleadings in preparing for the case.

The Court: All right, I can't see that you are asking for anything against the solicitor except that he be enjoined [fol. 12] from prosecution of these eleven cases, George Smith through, by amendment this morning, Ralph D. Abernathy. I will write an opinion on this later, and on all of it, but for the time being, in order to straighten the case out as we go along as much as possible, Mr. Thetford's motion is granted; the case is dismissed as to William Thetford.

Mr. Stewart: Thank you, sir.

Mr. Gray: I didn't understand; what was the court's ruling?

The Court: Motion granted as to Thetford; I am not going to enjoin the criminal prosecution of these eleven defendants. I will write an opinion on it later. All the rest of the case is still in, as to the other defendants. Let's take a fifteen minute recess; court will be in recess fifteen minutes.

(At which time, 3:06 p.m., a recess was had until 3:29 p.m. at which time the trial continued)

The Court: All right, we will present the testimony from the defendants in the same order you have cross examined. Greyhound Lines and Capital Motor Lines, Continental Crescent Lines.

Mr. Greenberg: May it please the court, we would at this time like to make an application to the court in connection with the dismissal of that portion of the suit which your honor just dismissed against the solicitor and the criminal proceeding. We would like to ask the court for an order, in the nature of a stay, for injunction, pending appeal as authorized by the Federal Rules, so that if what I think anyone will admit is concededly a complex legal issue ultimately is resolved in favor of the plaintiffs in this case, that aspect of the case will not be made moot by the fact that these proceedings are scheduled for a very short period of time from now.

The Court: All right. That motion will be denied. Let me say this, gentlemen; this is to all of you: That the granting of the motion as to Thetford was after the court reappraised the pleadings in the case and determined that the only relief the plaintiffs and intervenors seek, insofar as the Circuit Solicitor is concerned, was an injunction asking this Court to enjoin William F. Thetford, his agents and employees and successors in office and so forth from prosecuting certain designated criminal cases, those cases being eleven in number designated in the pleadings, and George Smith—State of Alabama against George Smith and others, through Gaylord Noice and by amendment allowed by the court this morning, including the case of State of Alabama against Ralph Abernathy; the court conceives the law to be as that set out in Section 2283 of Title 28 of the United States Code, that section relating to injunction by the Federal Courts for the purpose of restrain-[fol. 13] ing criminal prosecutions in state court. It is this court's opinion that, and as a general proposition, Section 2283 precludes the granting of such relief. In granting this motion as made by Thetford, and in making these remarks, I want you to understand that the court does not find or believe that the arrest of these individuals against whom these criminal proceedings are now pending was for any purpose other than to enforce segregation. As a matter of

fact, in the posture of the case, the court is of the opinion that the arrest of those individuals was for the purpose of enforcing segregation in these facilities. Nevertheless, that has nothing to do with enjoining the criminal prosecutions, and that was the reason for the court's granting the motion as it relates to Thetford and those designated criminal prosecutions. Do I make myself clear?

Mr. Pollak: (nodded to indicate affirmative reply)

Mr. Gray: (nodded to indicate affirmative reply)

The Court: All right, motion is denied. All right, Mr. Carter.

(The trial then continued)

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

I, Glynn Henderson, Official Court Reporter of the United States District Court for the Middle District of Alabama, do hereby certify that the foregoing 8 pages contain a true and correct transcript of proceedings had before the said Court held in the City of Montgomery, Alabama, in the matter therein stated, or that portion of said proceedings indicated in note on page 3 thereof.

In testimony whereof I hereunto set my hand on this the 6th day of September, 1961.

/s/ GLYNN HENDERSON
Official Court Reporter.

[File endorsement omitted]

[fol. 14]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

THE STATE OF ALABAMA,

v.

RALPH D. ABERNATHY.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1) which said act is vague, indefinite and uncertain. To require

defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 196., Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119 (1) of Title 14, Code of Alabama, 1940 and/or Title 14, Section 407, Code of Alabama, 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the affidavit, [fol. 15] Warrant and complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assemply, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant affidavit and Complaint deprives defendant of rights, privileges and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d)), the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pur- [fol. 16] suant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49, U.S.C. Sec. 316(d).

16. For that said allegations in said complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said complaint and affidavit are vague, indefinite and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegation of which are vague, indefinite and uncertain and in the event of a conviction it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said affidavit fails to aver what the violent, profane, indecent offen-

sive, boisterous conduct or language or conduct calculated to create a breach of the peace consists of.

25. For that said complaint and affidavit fail to aver [fol. 17] facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119 (1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119 (1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama 1940, Title 14, Section 119 (1), but the facts constituting said violent profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which said offenses he allegedly committed.

28. For that said complaint and affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, in-

decent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

[fol. 18] 32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or to do an unlawful act."

36. For that Count II of the complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague, and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite complaint would deprive defendant of rights, privileges and immunities guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial of this complaint deprives defendant of rights, privileges and immunities secured to him by the [fol. 19] Interstate Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police Personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of a racial

mob action, by conduct calculated to provoke a breach of the peace in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the Allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

"did meet with two or more persons to commit a breach of peace or to do an unlawful act."

[fol. 20] Whereas Count II of the Complaint charges that the defendant:

"did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut;

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 21]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA.

vs.

RALPH D. ABERNATHY.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT —November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to the ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the warrant, affidavit and complaint being argued by counsel and understood by

the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

STATE OF ALABAMA,
vs. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 22]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

v.

RALPH D. ABERNATHY.

MOTION TO EXCLUDE THE STATE'S EVIDENCE

Now comes the defendant in the above-entitled cause and moves this Honorable Court to exclude all of the State's evidence introduced in this cause and to discharge

the defendant, and as grounds therefor, assigns the following, separately and severally:

1. As a matter of law the evidence presented is insufficient to sustain a conviction of such offense, and the prosecution has failed to prove facts sufficient to constitute a prima facie case, or to prove the commission by the defendant of the crimes or offenses attempted to be alleged in the complaint or warrant and affidavit or any crime or offense at all.

2. As a matter of law the evidence presented is insufficient to sustain a conviction of such offenses in that the prosecution has failed to prove any criminal intent on the part of the defendant.

3. As a matter of law the evidence presented is insufficient to sustain a conviction of such offenses in that the prosecution has failed to prove that the conduct of the defendant did in fact provoke a breach of the peace.

4. As a matter of law the evidence presented is insufficient to sustain a conviction of such offenses in that the prosecution failed to prove that the conduct of the defendant threatened to provoke a breach of the peace.

5. As a matter of law the evidence presented is insufficient to sustain a conviction of such offenses in that the prosecution failed to prove that the conduct of the defendant was the product of a calculation, premeditation, or design to provoke a breach of the peace.

6. As a matter of law the evidence presented is insufficient to sustain a conviction of such offenses in that the prosecution has failed to prove that the conduct of the defendant was "violent, profane, indecent, offensive, or boisterous", and only conduct which may be so characterized is prohibited by the statute under which the defendant is accused.

7. As a matter of law the evidence presented is insufficient to sustain conviction of such offense in that the prosecution failed to prove that the defendant committed the acts with which he is charged with knowledge or scienter

that their acts would provoke other persons to breach the peace or to threaten a breach of the peace.

[fol. 23] 8. As a matter of law the evidence presented is insufficient to sustain a conviction of such offenses in that the prosecution failed to prove any connection between the defendant and the commission of any breach of the peace or threatened breach of the peace by persons other than the defendant and failed to prove any causal relationship between the acts of the defendant and any breach of the peace or threatened breach of the peace by other persons.

9. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the defendant committed the offenses with which he is charged, that conviction of the defendant upon the facts proved would deprive the defendant of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the defendant rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

10. If Section 119 (1) of Title 14, Code of Alabama, and/or Title 14, Section 407, Code of Alabama, 1940 is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts proved in this case, it is unconstitutional because it deprives the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily interfering with the defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

11. Title 14, Section 119(1) Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as amended is applied to convict the defendant of a crime or offense on the basis of the facts proved in this case; it is

unconstitutional because it deprives the defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the defendant as to what conduct might transgress it;

(b) the statutes provide no ascertainable standard of guilty and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the defendant fair notice of the nature and cause of the accusation against him.

[fol. 24] 12. If Title 14, Section 119(1), Code of Alabama, 1940 and/or Title 14, Section 407, Code of Alabama, 1940 is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts proved in this case, it is unconstitutional, because it deprives the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes require and permit the defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the defendant:

(a) without proof that the defendant had any intent to commit a crime; (b) without proof that the defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the defendant and the acts or threatened acts in breach of the peace by persons other than defendant, and for each of those reasons the said statutes as so interpreted and applied, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

13. If Title 14, Section 119(1), Code of Alabama, 1940 and/or Title 14, Section 407, Code of Alabama, 1940 is applied to convict the defendant of a crime or offense on the basis of the facts proved in this case, it is unconstitu-

tional, because it deprives the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

14. On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the man-
[fol. 25] ner of serving white and Negro patrons of R. E. McRae. After seating himself at the lunch counter with his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler, of Montgomery County and informed that he was under arrest.

15. Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County, a warrant of arrest charging defendant with disorderly conduct (Section 119(1) of Title 14, Code of Alabama) and unlawful assembly (Section 407, Title 14, Code of Alabama) which arrest warrant was issued pursuant to the following affidavit filed with said Court by the arresting officer, Sheriff Butler, on May 25, 1961:

"Count I Ralph D. Abernathy did disturb the peace of others by violent, profane, indecent, offensive or

boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did willfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group during a period when it was necessary to his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

"Count II Ralph D. Abernathy did meet with two or more persons to commit a breach of the peace or to do an unlawful Act."

16. Defendant, nor any of the persons who accompanied him was not engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most or all of whom including defendant, were either were clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The trial of these defendants under these circumstances:

(a) violates defendant's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates defendant's right to freedom of movement [fol. 26] throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., pp. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, pp8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, pp8) of the Constitution.

17. It affirmatively appears from the evidence thus far produced that this prosecution was instituted against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to produce evidence in refutation of the evidence thus far presented will deprive said defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and the Commerce clause thereof (a copy of the finding of the United States District Court for the Middle District of Alabama annexed to defendant's

Motion to Quash the Affidavit, Warrant, and Complaint is hereby incorporated by reference and made a part hereof.)

18. That there is a fatal variance between the allegations of the Complaint and the allegations of the Affidavit and the proof introduced in this cause, whereby defendant has been denied that notice guaranteed him by the due process clause of the Fourteenth Amendment to the United States Constitution.

19. To convict the defendant on the facts of this case which are the precise facts upon which the United States District Court for the Middle District of Alabama adjudicated rights between the defendant and the State of Alabama, and its aforesaid agents would be in violation of Article VI of the United States Constitution, The Supremacy Clause, In Lewis, et al. vs. Greyhound, et al. No. 1724-N, the transcript of the record and judgment of which are [fol. 27] appended hereto, marked Exhibits A & B and made a part hereof, the United States District Court for the Middle District of Alabama held that the arrest and prosecution of the defendant by the State of Alabama and its Agents were for the purpose of enforcing segregation and said determination precludes any contrary findings herein.

20. The arrest, prosecution and any conviction herein violates rights secured by the privilege and immunities clause of the Fourteenth Amendment to the United States Constitution.

The premises considered, defendant prays that this Court will set this down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant this motion.

Respectfully Submitted,

Solomon S. Seay, Jr., Attorney for Defendant.

DEFENDANTS' EXHIBIT "A" TO MOTION

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Filed Nov. 1, 1961
By: R. C. Dobson, Clerk
Civil Action No. 1724-N

JOHN R. LEWIS, PAUL E. BROOKS, LUCRETIA R. COLLINS, RUDOLPH GRAHAM, CATHERINE BURKS, MATTHEW PETWAY, RALPH D. ABERNATHY, and others similarly situated, Plaintiffs,

vs.

THE GREYHOUND CORPORATION; CAPITAL MOTOR LINES; CONTINENTAL CRESCENT LINES, INC.; EARL JAMES; L. B. SULLIVAN, and FRANK PARKS, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama; and GOODWIN J. RUPPENTHAL, ind. and as Chief of Police of the City of Montgomery, Alabama; MACDONALD GALLION, individually and as Attorney General of the State of Alabama; and C. C. JACK OWEN, J. S. FOSTER and SIBYL POOL, individually and as members of the Alabama Public Service Commission, and MAC SIM BUTLER, individually and as Sheriff of Montgomery County, Alabama, Defendants,

GEORGE SMITH, JOSEPH CHARLES JONES, WYATT T. WALKER, BERNARD LEE, FRED L. SHUTTLESWORTH and CLYDE CARTER; WILLIAM S. COFFIN, JOHN MAGUIRE, DAVID SWIFT and GAYLORD NOICE, Intervenors.

MEMORANDUM OPINION

This case is now submitted upon the several issues made up by the pleadings and the proof. Upon consideration of the evidence, consisting of the oral testimony of several

witnesses and the exhibits thereto, this Court as required by Rule 52, Federal Rules of Civil Procedure, makes the appropriate and necessary findings and conclusions, embodying the same in this Memorandum Opinion.

In this action the plaintiffs seek to enjoin the named defendants from continuing to pursue a policy, practice, custom or usage of segregating plaintiffs and members of their class on public interstate and intrastate motor carriers and [fol. 28] in facilities and services of bus terminals located in the City of Montgomery and in other cities within the Middle District of Alabama. Plaintiffs also seek relief from interference with the exercise of their constitutionally protected rights to ride public interstate and intrastate carriers and use terminal facilities and services without discrimination because of race, and further seek relief against arrests, harassment, intimidation, threats and coercion for the purpose of interfering with plaintiffs' exercise of such constitutionally protected rights.

The events leading up to the filing of this action were as follows:

A serious riot occurred at the Greyhound bus station in Montgomery, Alabama, on May 20, 1961. This incident occurred after an interracial group known as "freedom riders," arrived in Montgomery with the announced purpose of testing the bus facilities in Montgomery to determine whether the facilities could be used without any discrimination on account of race or color.

There was a crowd around the bus station as the bus arrived. After the bus parked to unload its passengers, the Greyhound bus driver announced over the loud-speaker system, "Here comes the 'freedom riders' to tame the South."

Some of the crowd then attacked the "freedom riders." General disorder broke out and during the following two hours a number of "freedom riders" and innocent Montgomery Negroes were injured by the mob. The police were not on the scene at the time the bus arrived.[1]

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[1]A more detailed discussion of the facts surrounding the May 20, 1961, riot may be found in this Court's opinion in *United States*

On May 19, 1961, in an action brought by the Attorney General of Alabama, one of the judges of the Circuit Court of Montgomery County, Alabama, issued a broad ex parte injunction[2] against the "freedom riders," and on May 20, [fol. 29] 1961, the same judge issued a contempt citation against twenty of the "freedom riders"—most if not all of whom were on the bus that arrived at the Montgomery Bus

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v. *U. S. Klans, et al.*, No. 1718-N. In that case, this Court specifically found "that the Montgomery Police Department . . . willfully and deliberately failed to take measures to ensure the safety of the students and to prevent unlawful acts of violence upon their persons. This lack of protection on the part of the city police of Montgomery continued even after the arrival of the bus." The Court's order of June 2, 1961, restrained and enjoined the Montgomery Police Department from "willfully failing to provide police protection for persons traveling in interstate commerce in and through Montgomery, Alabama".

[2] The petition in the Attorney General's suit alleged that: "the conduct of said persons traveling to and entry into the State of Alabama is such conduct calculated to provoke breaches of the peace throughout the State of Alabama; that such conduct threatens the safety, peace, and tranquility of the peoples of the State of Alabama; and further that such conduct has already resulted in serious breaches of the peace . . . "

The complaint elaborated incidents of violence which had recently occurred in connection with freedom rides, including the burning of one bus within the state, and several violent incidents in Birmingham requiring the local police to "take said persons (i.e., freedom riders) into protective custody and causing said persons to leave the State of Alabama in order to prevent further violence or bloodshed." The petition further alleged that the State had "no other adequate remedy to prevent irreparable injury to persons or property . . " The state court issued an injunction phrased in very broad terms:

". . . The respondents and others identified in said petition, its officers, agents, members, employees, servants, attorneys, followers, and all other persons in active concert or participation with respondents are hereby enjoined and restrained from continuing any acts designated in the petition, particularly the entry into and travel within the State of Alabama (and engaging in the so-called 'Freedom Ride' and other acts or conduct calculated to provoke breaches of the peace within the State of Alabama) and which act or conduct threaten the safety, peace, and tranquility and general welfare of the people of the State of Alabama."

station just before the riot, charging them with a willful violation of the injunction.

The Attorney General of Alabama was at the Montgomery city police station when he received information that the bus was arriving in Montgomery. He went to the bus station and "served" a copy of the state court injunction on one of the plaintiffs who had already been beaten by the members of the mob.

Limited martial law was declared in Montgomery on the night of May 21, 1961. On May 24, the "freedom riders" who had arrived on the 20th went to the Trailways bus station in Montgomery, were served at the white lunch counter, boarded a Trailways bus and departed for Jackson, Mississippi. They were accompanied by heavy convoy of national guardsmen.

On May 25, ten individuals, including both whites and Negroes,[3] were arrested by Montgomery County Sheriff Mac Sim Butler at the white lunch counter in the Trailways Bus Terminal in Montgomery on charges of breach of the peace and conspiracy. These arrests were made by the sheriff under specific directions from the National Guard Commander, General Graham. Prior to their ar- [fol. 30] rests, some of them had purchased tickets to Jackson, Mississippi. The group was taken to and confined in the jail.[4]

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[3] Seven of this group had come to Montgomery on May 24, after learning of the events in Montgomery, Alabama. These seven were not part of the original "freedom riders"; in fact, two of the seven joined the group by chance in Atlanta. Several of the group were white professors of religion at New England Colleges—one of whom was a native of Montgomery, Alabama.

[4] A typical warrant filed against intervenors charged that:

"Fred L. Shuttlesworth did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period which it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery."

This case was filed on May 25, 1961, by seven Negro citizens, five of whom were "riders" under injunction issued by the state court. The other two Negroes are residents of Montgomery.

The plaintiffs ask for injunctive relief against racial segregation on interstate and intrastate buses and in bus terminal facilities in the State of Alabama.[5] They also request relief against enforcing segregation by means of signs, arrests and other forms of harassment. Finally, they ask for injunctive relief against the enforcement of the state court injunction, including contempt proceedings.

On May 26, 1961, the ten persons arrested on May 25 at the Trailways Bus Terminal were granted leave to intervene. The supplemental complaint and complaint in intervention asked the Court to enjoin the state criminal prosecutions which were then pending in Montgomery County against the intervenors.

The plaintiffs assert three legal bases for relief. First, they assert that the defendants maintain and enforce a policy, practice, custom and usage of segregation in buses and bus terminal facilities and that the complained of policy, practice, custom and usage being under color of state law violates the equal protection and due process clauses of the Fourteenth Amendment. Second, they urge that they are being subjected to unjust discrimination in [fol. 31] interstate motor carrier transportation contrary to the terms of 49 U.S.C. 316(d). Third, they assert that the complained of conduct constitutes an undue and unreasonable burden upon interstate carriers in contravention of the "commerce clause" of the Constitution (Article 1, Section 8). In addition to these three general bases for relief, plaintiffs contend that the state court injunction and the specific arrests and threatened prosecutions

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It also charged that "Fred Shuttlesworth did meet with two or more persons to commit a breach of the peace or to do an unlawful act." These charges were based upon Title 14, pp. 119(1) (disorderly conduct) and Title 14, pp. 4-7 (unlawful assembly) of the Code of Alabama.

[5] Prior to the trial the relief sought was limited to the Middle District of Alabama by amendment of the complaint.

of certain of the plaintiffs contravene the order of this Court entered on June 19, 1956, in the case of *Browder* v. *Gayle*, No. 1147-N, enjoining racial segregation in the operation of the Montgomery City Lines, an intra-city bus transportation company operating in Montgomery.

The decree in *Browder* v. *Gayle*, 142 F. Supp. 707, does not dispose of the issues. That case involved the constitutionality of certain statutes and ordinances requiring the segregation of the white and colored races on motor buses which operated within the City of Montgomery. The decree was designed and intended to cope with a situation involving a local intra-city bus line where terminal facilities were not involved.

Much of the proof dealt with the events which occurred in Montgomery during the five-day period May 20-25, 1961. The relevancy of the events of that period is that they show, and show conclusively, that segregated use of bus terminal facilities in Montgomery, Alabama, was then an established practice.

Standing alone, the arrests on May 25 of the intervenors and the mob violence at the Greyhound bus Terminal on May 20 do not in and of themselves establish that the segregation practiced in the terminals was the result of a policy by the defendants; however, the actions of some of these defendants (and others) and the lack of action by state and city officials and particularly the testimony of General Graham that the disturbances were a reaction to an invasion of a settled social custom, compel this Court to conclude that prior thereto, there was segregation—by custom, practice and usage—within the bus terminals of the City of Montgomery.

Each of the defendants denies that he is *enforcing* the policy, practice, custom and usage alleged by the plaintiffs. It is significant, however, that none of the defendants specifically denies the existence of such policy and practice. As a matter of fact, the defendants, Capital Motor Lines and Continental Crescent Lines, Inc., admit in their answers that throughout Alabama they maintain separate facilities in their terminals for the white and negro races and that signs are posted in the terminals indicating which

facilities are for the use of each race. The other defendant motor carrier, the Greyhound Corporation, while also specifically denying in its answer that it is *enforcing* segregation, is silent on whether it maintains separate facilities [fol. 32] for the two races in its terminals or utilizes facilities where segregation is practiced. The significance of this silence is underlined by the statement of Greyhound's terminal manager in Montgomery. In his deposition the manager conceded that the terminal was constructed in 1951 with duplicate facilities for the separate use of the white and colored races; that as recently as the early part of this year signs were posted in the terminal designating the particular facilities to be used by each race; and that until at least May 24, 1961, the facilities were in fact used on a segregated basis.

Based on all of the testimony, the Court must conclude that Greyhound and the other defendant bus companies have been maintaining and utilizing separate facilities for the use of the two races in their terminals and other such facilities located in the Middle District of Alabama.

The contention of the defendant carriers that they are not *enforcing* segregation in the separate facilities which they maintain or utilize is not a sufficient answer to a charge of a violation of 49 U.S.C. 316(d), which prohibits them from subjecting any persons to "any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever." Both the Interstate Commerce Commission and the federal courts have held that the maintenance of separate facilities for the two races constitutes unjust discrimination even though the use is not strictly enforced. *NAACP* v. *St. Louis-San Francisco Railway*, 297 I.C.C. 335 (1955); *Baldwin* v. *Morgan*, 287 F. 2d. 750 (5th Cir., 1961). Accordingly, the plaintiffs are entitled to relief against the carriers by virtue of the provisions of the Motor Carriers Act, and such relief is not dependent on whether or not the existing policy of providing separate facilities involves state action.

On September 22, 1961, the Interstate Commerce Commission unanimously adopted new regulations dealing with discrimination in the operation of interstate motor car-

riers. Part of these regulations dealt with terminal facilities. They prohibit interstate bus companies from using segregated terminal facilities. These regulations are clear, concise, and merely reiterate the laws as explained in *Boynton* v. *Virginia*, 364 U.S. 454. Accordingly, the injunction that will be issued in this case will be framed in the language of the regulations. Obviously, the injunction will apply to facilities owned or controlled by the bus companies.[6] But, it will also cover facilities used by the bus companies as an integral part of their operations. So that there will be no misunderstanding, the Court's order does not apply "to every independently operated roadside restaurant at which a bus stops solely to pick up or discharge occasional passengers, or to every independently operated corner drug store which sells tickets for a motor carrier." However, if in addition to selling tickets, the agent offers or provides terminal services or facilities for the comfort [fol. 33] and convenience of interstate passengers, such as a public waiting room, rest room, or eating facilities, "then the premises where these services and facilities are made available are part of the carrier's terminal facilities.

If the existing policy and practice of affording separate facilities according to race is either enforced or authorized by state law or by any other form of state action, then the policy not only offends the provisions of the Motor Carriers Act, but also violates the Fourteenth Amendment. *Browder* v. *Gayle*, 142 F. Supp. 707, affirmed 352 U.S. 903; *Baldwin* v. *Morgan*, 287 F.2d, 750 (5th Cir., 1961); *Boman* v. *Birmingham Transit Co.*, 280 F. 2d 531 (5th Cir., 1960). The evidence here establishes such state action. Although the plaintiffs do not attack the constitutionality of any specific state statute and although the arrests of which they complain were not specifically for violation of a segregation law, it is clear that the policy, practice, custom and usage which the carriers are following is an official policy, practice, custom, and usage of the State of Alabama. The

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[6] As used in this opinion and as used in the injunction order of this Court to be issued in this case, the term "terminal facilities" is to be and is defined as set out on page 3 of the order of the Interstate Commerce Commission issued September 22, 1961.

State has long had on its statute books a law requiring segregation of the races in bus and rail terminals. 48 Ala. Code 301(31) (A)(b)(c).[7] The defendant Alabama Public Service Commission on February 8, 1956, issued General Order No. T-21 requiring that signs reading "colored waiting rooms" and "white waiting rooms" be posted at the entrances of the separate facilities maintained at passenger stations and depots. This order has never been rescinded. Furthermore, on April 19, 1961, after the decision of the Court of Appeals for the Fifth Circuit in *Baldwin* v. *Morgan*, supra, the Public Service Commission issued an order modifying General Order No. T-21, but only to the extent that it should not apply to the facilities of the Birmingham Terminal Company in Birmingham which were the subject of the Court's order in the *Baldwin* Case. The conclusion is inescapable that the policy of racial segregation in bus terminals in Alabama is the official policy of the state and that motor carriers, in providing separate facilities, are carrying out and implementing that official policy. This they are prohibited from doing by the terms of the Fourteenth Amendment. See particularly *Baldwin* v. *Morgan* supra.

Not only does state-imposed segregation of bus passengers violate the Fourteenth Amendment, but insofar as such segregation bears upon interstate travelers, it also offends the "commerce clause" of the Constitution (Art. 11, [fol. 34] Sec. 8). *Morgan* v. *Virginia*, 328 U.S. 373. As the Supreme Court pointed out in *Morgan*, a state effort to regulate seating arrangements of interstate passengers upon the basis of their race contravenes the need for national uniformity in the regulation of interstate travel. Accordingly, any attempt at such regulation violates the Constitutions' provision that power over interstate commerce resides with the Federal Government. See also *Whiteside* v. *Southern Bus Lines*, 177 F. 2d 949; *Williams* v. *Carolina Coach Co.*, 111 F.Supp. 329, affirmed 207 F. 2d 408.

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[7] This statute, in the context of public bus transportation, within the City of Montgomery, was declared unconstitutional in *Browder* v. *Gayle*, 142 F. Supp. 707.

The Attorney General of Alabama is designated by the laws of the State of Alabama as the legal adviser of the Public Service Commission (55 Ala. Code 228). The evidence shows that during the period pertinent to this case, the Attorney General placed one or more of his assistants at the disposal of the Public Service Commission and that an assistant attorney general prepared for the commission the letter in 1956 which directed the carriers to enforce segregation. The Court must conclude, therefore, that the actions of the Commission in this field of its operation have been taken with the advice of the Attorney General.

Furthermore, although the Attorney General of Alabama has been aware of the fact that passengers on interstate buses were entitled to use bus terminal facilities in Montgomery on a nonsegregated basis, he has never considered it his duty to advise local prosecutors or local law enforcement officers of that fact. To the contrary, when an attempt was made in Alabama to test the effectiveness of the federal law, the Attorney General responded by petitioning a state court for an injunction prohibiting the "freedom riders" and all persons having notice of the injunction from testing segregation practices in interstate bus facilities in Alabama.

Although the Attorney General of Alabama protests that his purpose was to preserve the peace, safety and tranquility of the people of the State of Alabama, the Court finds that one of his primary purposes was to enforce segregation contrary to the federal law, a law he was duty bound to uphold.

The arrests which are the subject of the intervenor's claim were the result, in part at least, of emergency conditions which this Court believes are unlikely to occur again. In this connection, the evidence relating to Sheriff Butler's participation in the arrests indicates that he acted only under the specific direction of the National Guard Commander. Montgomery is no longer under limited martial law. There is nothing in the record to indicate that Sheriff [fol. 35] Butler will make arrests to enforce segregation in the future. No injunction will issue against him.

The City Board of Commissioners, although it had no specific jurisdiction under state law to regulate motor carriers, has used its fire and police departments to maintain segregation in the terminal facilities. For example, on May 15, 1961, the day the "freedom riders" were first expected in Montgomery, the restaurant facilities in both bus terminals were closed by the Montgomery fire inspector. The closing of the restaurants was not justified; the violations noted in the inspection reports were trivial; no action was taken on them when they were first noted (May 10th, and 11th) and the proprietor was given no advance notice or opportunity for administrative appeal.[8]

Further evidence as to the actions of the City commissioners on May 21 concerns the treatment of two Atlanta Negroes who came to Montgomery by bus. While using the pay telephone in the white waiting room, they were told by a city policeman to move to the colored waiting room. When they did not move they were arrested and taken to the jail in a police car on the ground that they had disobeyed an officer. At the jail they were fingerprinted, photographed, and forty-five minutes later, released. Although the city police maintain that this was done to protect the two negroes from the mob, the Court finds that it was done to maintain segregation in the bus terminal.

Based upon the foregoing, this Court concludes that the plaintiffs are entitled to relief against those of the defendant state and local officials who have the authority to implement the state policy of segregation and/or those officials who have been in fact implementing the state policy of segregation. This includes first the Alabama Public Service Commission and its members.

The Attorney General of Alabama will be enjoined from taking steps to enforce the injunction issued in the Mont-

[8] Letters were written to the restaurant operators at the two bus terminals directing them to close their restaurants immediately. The dates on the carbon copies, May 15, 1961, appear to have been inserted by using a different typewriter. This, together with the coincidence of closing both terminals for fire regulation deficiencies on the same day . . . which day was the day first expected date of arrival of the "freedom riders" compels the Court to conclude that the terminals were closed to prevent their use by the "freedom riders" on a non-segregated basis.

gomery Circuit Court, or enforcing directly or indirectly segregation in buses or bus terminal facilities within the Middle District of Alabama.

An injunction will also issue against the Board of Commissioners of the City of Montgomery, their agents and employees, and the Chief of Police of Montgomery, his agents and employees, enjoining them from enforcing seg- [fol. 36] regation and in particular from using fire safety regulations, breach of the peace, disorderly conduct or other statutes for the purpose of enforcing segregation against persons who, under ordinary circumstances, conduct themselves in an orderly and peaceful manner in any area, section or part of any terminal utilized by the bus carriers.[9]

Done, this the 1st day of November, 1961.

/s/ FRANK M. JOHNSON, JR.
United States District Judge.

Attest: A True Copy Certified to Nov. 20, 1961.

R. C. Dobson, Clk. U. S. District Court
Middle District of Alabama

By: /s/ ANNIE SCHOOLER, Deputy Clerk.

[9] That part of the action seeking relief against the state court's proceedings in the criminal cases has already been denied by separate action of this Court.

DEFENDANTS' EXHIBIT "A-1" TO MOTION

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Filed Nov. 1, 1961
By: R. C. Dobson, Clerk
Civil Action 1724-N

JOHN R. LEWIS, PAUL E. BROOKS, LUCRETIA R. COLLINS, RUDOLPH GRAHAM, CATHERINE BURKS, MATTHEW PETWAY, RALPH D. ABERNATHY, and others similarly situated, Plaintiffs,

vs.

THE GREYHOUND CORPORATION; CAPITAL MOTOR LINES; CONTINENTAL CRESCENT LINES, INC.; EARL JAMES; L. B. SULLIVAN, and FRANK PARKS, individually and as members of the Board of Commissioners of the City of Montgomery, Alabama; and GOODWIN J. RUPPENTHAL, individually and as Chief of Police of the City of Montgomery, Alabama; MACDONALD GALLION, individually and as Attorney General of the State of Alabama; and C. C. JACK OWEN, J. S. FOSTER and SIBYL POOL, individually and as members of the Alabama Public Service Commission, and MAC SIM BUTLER, individually and as Sheriff of Montgomery County, Alabama, Defendants,

GEORGE SMITH, JOSEPH CHARLES JONES, WYATT T. WALKER, BERNARD LEE, FRED L. SHUTTLESWORTH and CLYDE CARTER; WILLIAM S. COFFIN, JOHN MAGUIRE, DAVID SWIFT and GAYLORD NOICE, Intervenors.

DECREE

In accordance with the Memorandum Opinion entered by the Court this day,

It Is Ordered, Adjudged and Decreed:

1. That the defendants the Greyhound Corporation, Capital Motor Lines and Continental Crescent Lines, Inc., their officers, employees, agents, successors and all persons in active concert or participation with them, be and [fol. 37] they hereby are permanently enjoined, from and after November 1, 1961, and within the Middle District of Alabama, from:

(a) Maintaining, utilizing or following any practice which includes the availability of any terminal facilities in which any portion thereof is maintained for the separate use, upon the basis of their race or color, of passengers of the defendant's vehicles operated in interstate commerce;

(b) Otherwise discriminating against the plaintiffs, or any other person, upon the basis of race or color in their use of vehicles and facilities used or made available by the Greyhound Corporation, Capital Motor lines, or Continental Crescent Lines, Inc., for passengers traveling in interstate commerce by motor carrier.

The Greyhound Corporation, Capital Motor Lines, and Continental Crescent Line Inc., shall each report to the Court in writing by December 1, 1961, the steps each of them has taken to comply with this paragraph of the decree.

2. That the defendants Earl James, L. B. Sullivan, Frank Parks, MacDonald Gallion, Goodwin J. Ruppenthal, C. C. Owen, J. S. Foster and Sibyl Pool, their employees, agents, successors, and all persons in active concert or participation with them, be and they are hereby permanently enjoined from:

(a) Enforcing or implementing in any manner or by any means a policy, custom, practice, or usage of segregating upon the basis of their race passengers of motor common carriers within the Middle District of Alabama;

(b) Enforcing or implementing in any manner or by any means the segregation of the plaintiffs, or of any

other person, upon the basis of their race or color, in terminal facilities used by motor common carriers within the Middle District of Alabama, and

(c) Arresting, threatening, intimidating, harassing, or attempting to arrest, threaten, intimidate, or harass the plaintiffs or others on account of the plaintiffs or such others having used or attempted to use motor common carrier terminal facilities upon a racially non-segregated basis.

3. That a copy of the Interstate Commerce Commission opinion and rule of September 22, 1961, be attached to each writ of injunction served upon the defendants.

4. That the costs incurred in this proceeding be and they are taxed against the defendants.

5. That this injunction shall be effective Nov. 1, 1961.

Done This 1st day of November, 1961.

/s/ FRANK M. JOHNSON, JR.
United States District Judge.

Attest a true copy

Certified to Nov. 20, 1961
R. C. Dobson, Clerk U. S. Middle District Court, of Alabama

By: Annie Sehoolar, Deputy Clerk.

[fol. 38]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

RALPH D. ABERNATHY.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of he law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $99.75, it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an additional term [fol. 39] of 133 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 193 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on June 1, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 40]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

STATE OF ALABAMA,

v.

RALPH D. ABERNATHY.

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the defendant in the above styled cause and moves the Court to set aside its finding of the Defendant

guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the defendant's Demurrers to the Warrant, Affidavit and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's evidence.

6. The Court erred in ruling that the exhibits attached to defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV of the Constitution of Alabama, 1901.

9. The conviction of the defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the defendant under the evidence introduced by this case is a denial of defendant's rights

to the due process of law guaranteed by Article 1, Section VI of the Constitution of Alabama, 1901.

11. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under Article 1, Section 7 of the Constitution of Alabama, 1901.

[fol. 41] 13. The subjection of the defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7 and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7 and 13 of Article 1 of the Constitution of Alabama 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the defendant is based upon a Complaint, which said complaint did not allege when the alleged offense was committed.

22. That the conviction of the defendant was based upon a complaint, and for aught that appeared in the complaint, this action was barred by the Statute of Limitations.

23. That t ere was a fatal variance between the allegation of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the defendant of rights secured by the due process and equal protection [fol. 42] clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119(1) Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the defendant of rights secured by the due process clause of the Four-

teenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) The statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1) Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the defendants: (a) without proof that the defendant had any intent to commit a crime; (b) without proof that the defendant had knowledge or scienter of (illegible) or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the defendant and the acts or threatened acts in breach of the peace by persons other than the defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1) Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and

permit the defendant to be convicted of a crime for merely [fol. 43] seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the defendant under the evidence of this case: (a) Violated defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d) and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived defendant of rights of free transit on interstate carriers, free access to the terminal and other

facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8), of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

[fol. 44] 32. The judgment of the Court is so excessive as to deprive the defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 46]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the
Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and
Unlawful Assembly

THE STATE OF ALABAMA

vs.

RALPH D. ABERNATHY

ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 47]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial

Circuit of Alabama, and the attorneys of record for each of the defendants in the above styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 48] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objection to the submission of the above said separate cases to the Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except in paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

[fol. 49] On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated at the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and negro patrons of R. E. McRae. After seating himself at the lunch counter with his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit;

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 S. Union St., Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut, Attorneys for the Defendants, By: Fred D. Gray.

[File endorsement omitted]

[fol. 50]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 185

STATE OF ALABAMA

vs.

RALPH D. ABERNATHY,
alias Ralph David Abernathy

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Riggs, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

Ralph D. Abernathy, Defendant.

ARRAIGNMENT—November 14, 1961

The Solicitor: 185, Ralph D. Abernathy: On a Solicitor's Complaint you are charged, in Count 1, with disturbing the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did willfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: You are charged that you did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that you did meet with two or more [fol. 51] persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery County, Alabama, and it was necessary for your own safety for you to be protected by military and police personnel.

Attorney Gray: I would like to file a motion to quash the warrant, affidavit and complaint. We are willing to submit it without arguing, if Your Honor please.

The Court: Motion to quash overruled.

Attorney Gray: We take an exception. We would like then to file demurrers.

The Court: All right. Do they contain the same thing?

Attorney Gray: There is something else added to it, Your Honor.

The Court: All right. Are you ready to argue the demurrers?

Attorney Gray: We are willing to submit them, unless Your Honor wishes argument.

The Court: Demurrers overruled.

Attorney Gray: Note and exception.

The Court: You automatically have an exception.

Attorney Gray: The defendant pleads not guilty.

The Court: All right.

[fol. 52]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 186

STATE OF ALABAMA,

vs.

CLYDE L. CARTER, alias Clyde LaRocque Carter.

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Rigg, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

Clyde L. Carter, Defendant.

ARRAIGNMENT—November 14, 1961

The Solicitor: No. 186, Clyde L. Carter. Clyde L. Carter, on a Solicitor's Complaint you are charged with disturbing the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that you did willfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your safety for you to be protected by military and civil police personnel.

And in a second count you are charged with meeting with two or more persons to commit a breach of the peace or to [fol. 53] do an unlawful act, in that you did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery County, Alabama, and it was necessary for your own safety for you to be protected by military and police personnel.

Attorney Gray: We file a similar motion to quash and a demurrer.

The Court: Motion to quash and demurrers overruled.

Attorney Gray: The defendant pleads not guilty.

[fol. 54]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 187.

STATE OF ALABAMA,

vs.

WILLIAM S. COFFIN, JR., alias William Sloan Coffin.

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Riggs, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

William S. Coffin, Jr., Defendant.

ARRAIGNMENT—November 14, 1961

The Solicitor: 187, William S. Coffin, Jr. On a Solicitor's Complaint you are charged that you did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that you did willfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and civil police personnel.

In Count 2 you are charged that you did meet with two or more persons to commit a breach of the peace or to do [fol. 55] an unlawful act, in that you did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety and protection for you to be protected by military and police personnel.

Attorney Gray: We file a motion to quash and demurrers.

The Court: Motion and demurrers overruled.

Attorney Gray: The defendant pleads not guilty.

[fol. 56]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 188

STATE OF ALABAMA,

vs.

JOSEPH CHARLES JONES.

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Riggs, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

ARRAIGNMENT—November 14, 1961

The Solicitor: 188, Joseph Charles Jones. On a Solicitor's Complaint you are charged that you did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that you did willfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and civil police personnel.

In Count 2 you are charged that you did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that you did meet with two or more [fol. 57] persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and police personnel.

Attorney Gray: We file a motion to quash and demurrers.

The Court: Motion and demurrers overruled.

Attorney Gray: The defendant pleads not guilty.

[fol. 58]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 190

STATE OF ALABAMA,

vs.

JOHN DAVID MAGUIRE.

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Riggs, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

John David Macguire, Defendant.

The Solicitor: 190. John David Maguire. On a Solicitor's Complaint you are charged that you did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that you did willfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and civil police personnel.

In Count 2 you are charged that you did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that you did meet with two or more [fol. 59] persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and police personnel.

Attorney Gray: We file a motion to quash and demurrers.

The Court: Motion and demurrers overruled.

Attorney Gray: The defendant pleads not guilty.

[fol. 60]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 191

STATE OF ALABAMA,

vs.

GAYLORD B. NOYCE, alias Gaylord Brewster Noyce.

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Riggs, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

Gaylord B. Noyce, Defendant.

ARRAIGNMENT—November 14, 1961

The Solicitor: 191, Gaylord B. Noyce. On a Solicitor's Complaint you are charged that you did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that you did willfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing the said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own

safety for you to be protected by military and civil police personnel.

In Count 2 you are charged that you did meet with two or more persons to commit a breach of the peace or to do [fol. 61] an unlawful act, in that you did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and police personnel.

Attorney Gray: We file a motion to quash and demurrers.

The Court: Motion and demurrers overruled.

Attorney Gray: The defendant pleads not guilty.

[fol. 62]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 192

STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH, alias Fred Lee Shuttlesworth.

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Riggs, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

Fred L. Shuttlesworth, Defendant.

ARRAIGNMENT—November 14, 1961

The Solicitor: 192. Fred L. Shuttlesworth. On a Solicitor's Complaint you are charged that you did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that you did willfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and civil police personnel.

In Count 2 you are charged that you did meet with two or more persons to commit a breach of the peace or to do [fol. 63] an unlawful act, in that you did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety and protection for you to be protected by military and police personnel.

Attorney Gray: We file a motion to quash and demurrers.

The Court: Motion and demurrers overruled.

Attorney Gray: The defendant pleads not guilty.

[fol. 64]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 193

STATE OF ALABAMA,

vs.

GEORGE B. SMITH, alias George Bundy Smith.

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Riggs, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

George B. Smith, Defendant.

ARRAIGNMENT—November 14, 1961

The Solicitor: 193. George B. Smith. On a Solicitor's Complaint you are charged that you did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that you did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and civil police

In Count 2 you are charged that you did meet with two or more persons to commit a breach of the peace or to do [fol. 65] an unlawful act, in that you did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and police personnel.

Attorney Gray: We file a motion to quash and demurrers.

The Court: Motion and demurrers overruled.

Attorney Gray: The defendant pleads not guilty.

[fol. 66]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 194

STATE OF ALABAMA,

vs.

DAVID E. SWIFT, alias David Everett Swift.

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Riggs, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

David E. Swift, Defendant.

ARRAIGNMENT—November 14, 1961

The Solicitor: 194. David E. Swift. On a Solicitor's Complaint you are charged that you did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that you did willfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surroumded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and civil police personnel.

In Count 2 you are charged that you did meet with two or more persons to commit a breach of the peace or to do [fol. 67] an unlawful act, in that you did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and police personnel.

Attorney Gray: We file a motion to quash and demurrers.

The Court: Motion and demurrers overruled.

Attorney Gray: The defendant pleads not guilty.

[fol. 68]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 195

STATE OF ALABAMA,

vs.

WYATT TEE WALKER, alias W. Tee Walker.

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Riggs, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

Wyatt Tee Walker, Defendant.

ARRAIGNMENT—November 14, 1961

The Solicitor: 195. Wyatt Tee Walker. You are charged in a Solicitor's Complaint that you did meet with two or more persons to commit a breach of the peace or do an unlawful act, in that you did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and civil police personnel, against the peace and dignity of the State of Alabama.

Attorney Gray: Your Honor, we file a motion to quash [fol. 69] and demurrers.

The Court: All right. Motion and demurrers overruled.

Attorney Gray: The defendant pleads not guilty.

[fol. 70]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 189

STATE OF ALABAMA,

vs.

BERNARD S. LEE, alias Bernard Scott Lee.

Before: Hon. Eugene W. Carter, Circuit Judge.

Present:

William F. Thetford, Esq., Circuit Solicitor, Maury D. Smith, Esq., and Frank W. Riggs, III, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., and Charles S. Conley, Esq., for Defendant.

Bernard S. Lee, Defendant.

ARRAIGNMENT—November 14, 1961

The Solicitor: 189. Bernard S. Lee. Bernard S. Lee, the Grand Jury of Montgomery County charge that you did disturb the peace of others in Montgomery County, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that you did willfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of

hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and civil police personnel.

In Count 2 you are charged that you did meet with two or more persons to commit a breach of the peace or to do [fol. 71] an unlawful act, in that you did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for your own safety for you to be protected by military and police personnel.

Attorney Gray: We file the same motion and demurrers.

The Court: All right. Motion and demurrers overruled.

Attorney Gray: The defendant pleads not guilty.

[fol. 72]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

November Term, 1961

No. 185

STATE OF ALABAMA,

vs.

RALPH D. ABERNATHY.

No. 186

STATE OF ALABAMA,

vs.

CLYDE L. CARTER.

No. 187

STATE OF ALABAMA,

vs.

WILLIAM S. COFFIN, JR.

No. 188

STATE OF ALABAMA,

vs.

JOSEPH CHARLES JONES.

No. 189

STATE OF ALABAMA,

vs.

BERNARD S. LEE.

No. 190

STATE OF ALABAMA,

vs.

JOHN DAVID MAGUIRE, alias
JOHN DAVID MACGUIRE.

[fol. 73]

No. 191

STATE OF ALABAMA,

vs.

GAYLORD B. NOYCE.

No. 192

STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

No. 193

STATE OF ALABAMA,

vs.

GEORGE B. SMITH.

No. 194

STATE OF ALABAMA,

vs.

DAVID E. SWIFT.

No. 195

STATE OF ALABAMA,

vs.

WYATT TEE WALKER.

[fol. 74]

Transcript of Proceedings—November 20, 1961

Before: Hon. Eugene W. Carter, Circuit Judge, without a jury.

Court Room No. 1, County Court House, Montgomery, Alabama, Monday.

PRESENT:

Frank W. Riggs, III, Esq., and Maury D. Smith, Esq., Deputy Circuit Solicitors, for the State.

Fred D. Gray, Esq., Solomon S. Seay, Jr., Esq., Charles S. Conley, Esq., Charles D. Langford, Esq., Jack Greenberg, Esq., and Louis H. Pollak, Esq., for Defendants.

All defendants in person.

COLLOQUY

Deputy Solicitor Smith: We ask for the Rule, if the Court please.

We have two or three other things if the Court please to get straight. Are we going to try this case with a jury or without a jury?

Attorney Gray: We waive a jury, Your Honor.

The Court: Another thing. Are we going to try them singly or are we going to try them collectively?

Deputy Solicitor Smith: We agreed to try them all together.

The Court: Try them collectively. Let us get those two stipulations in.

Attorney Gray: It is also understood in the case against the defendant Wyatt T. Walker there is only one count in the complaint.

The Court: All right. In trying these cases collectively the Court, of course, has to make the judgment against each one separately anyway, and I will be governed by whatever complaint is filed.

[fol. 75] I would like to say that we have two out-of-town lawyers in this case, they are highly recommended, and the Court is delighted to have them in this case.

Attorney Greenberg: Thank you.

Attorney Pollak: Thank you, Your Honor.

The Court: Let all the witnesses be sworn at one time. Have you asked for the Rule? Do either side want the Rule?

Deputy Solicitor Riggs: We want the Rule except for Mr. Martin, who is a reporter.

The Court: All right.

(All witnesses sworn by the Court.)

They asked for the Rule. All witnesses out.

State's Evidence

Mac Sim Butler, having been duly sworn, was examined and testified as follows:

Direct examination.

By Deputy Solicitor Riggs:

Q. This is Sheriff Mac Sim Butler?

A. Yes, sir.

Q. Are you Sheriff of Montgomery County, Alabama?

A. Yes, sir.

Q. Were you Sheriff of Montgomery County on and around May 25th, 1961?

A. Yes, sir.

Q. On May 25th, 1961, what was your position with respect to being a law enforcement officer in Montgomery County?

A. Montgomery County was under martial rule and I was to take my orders from the Commanding Officer of the Military Department of the State of Alabama.

Deputy Solicitor Smith: Mr. Jenkins of the Advertiser Journal is also a witness. Would you excuse him from the Rule?

[fol. 76] Attorney Gray: Yes, sir.

By Deputy Solicitor Riggs:

Q. Now, did you on May 25th, 1961, arrest the eleven defendants in these cases?

A. I did, sir.

Q. Where were they arrested?

A. At the Trailways Bus Terminal.

Q. What time of day were they arrested?

A. It has been a pretty good while to say. It would be a matter of guess, but it was in the morning, the late morning.

Q. All right, sir. Describe where they were when they were arrested.

A. They were seated at the lunch counter, and one or two, I forget how many, hadn't sat down, all in a group there.

Q. Now, when did you first see the eleven defendants that morning?

A. When they came in the rear entrance to the bus terminal.

Q. Were you already at the bus terminal when they came in?

A. I was, sir.

Q. And what did they do after they came in?

A. Well, they went to the ticket office, ticket window, I believe first, and I don't know whether all of the group purchased tickets, or not, but they were in that vicinity, and they left and came to the lunch counter.

Q. All right, sir. Now, were there any other people present besides yourself and the defendants?

A. Yes, sir.

Q. Who else was present?

A. There were a number of law enforcement officers, there were other people I imagine waiting to catch a bus, several people milling around in there whom none of us knew. I believe there were close to thirty people present, making a rough guess. It has been a good while.

Q. Those were people inside of the bus station?

A. Yes, sir.

Q. And were they the unknown you were talking about, or were they law enforcement people?

[fol. 77] A. Well, I knew a good many of them, but there were others we did not know. I would say maybe twelve or fifteen were law enforcement officers, either of the National Guard, State, County and City, all of them together, added thirty.

Q. And in your best judgment how many people were in the bus station who were not law enforcement officers?

A. Well, excluding the eleven or twelve in the group I imagine there were at least eighteen or more other people.

Q. All right, sir. Now, was there anybody outside of the bus terminal at that time?

A. Yes, sir.

Q. Who was outside?

A. I don't know how many troops the General had outside in the street and along the sidewalk, but beyond the troops, just a rough estimate, as I was walking from Montgomery Street down to the bus terminal there must have been four or five hundred people.

Q. Now, did you have an opportunity to observe this crowd as you went into the bus station?

A. Yes, sir.

Q. And immediately prior to the arrest of these eleven defendants did you see the crowd that was inside of the bus station and the crowd that was outside of the bus station?

A. I could see a portion of the crowd that was outside looking through the front, the front glass, across the street.

Q. How long have you been a law enforcement officer?

A. Well, I imagine close to twenty-five years.

Q. During that time have you had occasion to observe crowds to determine whether or not they were hostile or uneasy crowds?

A. I have, sir.

Q. And I believe you have already testified you observed this group of people inside of the station and outside of the station?

A. Yes, sir.

Q. Did you make any observation with respect to that crowd of people?

A. I did, sir.

[fol. 78] Q. What was that observation?

Attorney Gray: We object, Your Honor. I don't feel he is in a position to tell what was in these persons' minds.

Deputy Solicitor Smith: He has been a law enforcement officer for twenty-five years and been dealing with people of this type. We submit he is eminently qualified.

Attorney Gray: This calls for an undisclosed mental operation which he couldn't possibly testify to or determine.

Deputy Solicitor Smith: He is asking for the attitude of the crowd, of course.

The Court: I will let him tell what happened previously at the station and then let him tell that.

Deputy Solicitor Riggs: All right, sir.

By Deputy Solicitor Riggs:

Q. I believe you already testified, Sheriff, that Montgomery County was under martial rule at this time.

A. It was, sir.

Q. What has caused the imposition of martial rule in Montgomery County?

Attorney Gray: We object.

The Court: Overrule your objection.

The Witness: In my opinion, it was caused by the—

By the Court:

Q. Not your opinion. What caused it? Your best judgment, not your opinion.

A. Well, riots had broken out and the Governor saw fit to call martial rule caused by the freedom riders.

By Deputy Solicitor Riggs:

Q. All right, sir. Now, when did the first riot break out?

Attorney Gray: Your Honor, we are going to object to this unless he can show that this happened immediately prior to the time this event occurred on May 24th.

The Court: Any time, not just exactly immediately prior, but any time prior to that in the neighborhood of that time.

[fol. 79] By Deputy Solicitor Riggs:

Q. When was the first riot?

A. On Saturday previous to the Sunday night which they had another incident at the church. That is two that I recall.

Q. All right. These arrests were made on Thursday, May 25th, and that would have been Saturday, May the 20th, 1961?

A. That's right. Previous to the day of the arrest.

Q. And where did that riot take place?

A. One incident took place at the Greyhound Bus Station near the Post Office; the other one was on Ripley and Union on Sunday night.

Q. Were both of those riots on Saturday?

A. I believe one was on Saturday and the other was on Sunday night.

Q. For the present confine your testimony to Saturday.

A. Right.

Q. And that is when the first riot occurred, I believe you said?

A. That's right.

Q. Did you participate in any way in the control of that riot at the Greyhound Station on Saturday?

A. I did, sir.

Q. Describe what you saw there at the riot on Saturday at the Greyhound Station.

Attorney Gray: Your Honor, we are going to further object to this entire line of questioning because, as I am sure counsel realizes, many of these persons were not even in Montgomery at the time, and what happened at that time I see no relevancy at all to these cases.

Deputy Solicitor Smith: Your Honor, we submit they knew what happened in Montgomery prior to this time and that actually provoked their coming to Montgomery. We expect the evidence to show that. And we would further like for the Record—

The Court: Well, let me state this. Not having a jury, the Judge will allow it in at this time, and if it is not connected up it will go out.

Deputy Solicitor Smith: Yes, sir.

[fol. 80] The Witness: Shall I go ahead, sir?

By the Court:

Q. Go ahead.

A. As the Sheriff's office had done on previous occasions, working with other law enforcement officers, we had our horses down as quick as possible that morning after being notified that a bus loaded with freedom riders was on its way to Montgomery coming from Birmingham. Immediately after we got to the Court House we unloaded our horses and the Chief Deputy Sheriff of this county, Mr. Richard Goodwyn, contacted us by radio, and we went to the intersection of Court and Adams Avenue as soon as we could with our horses through the busy streets. And after we got there we used our horses in dispersing a crowd of people who had come out of the bus station and keeping them across the street with the assistance of the Highway Patrol, motorcycle men and other law enforcement officers.

By Deputy Solicitor Riggs:

Q. All right, sir. Now, where was that crowd when you got to the bus station on Saturday?

A. The crowd was in the area where they park buses at the Greyhound Bus Station.

Q. And what were they, or what was—what were they doing?

A. Well, the only action I saw was a lot of hollering and whooping and threats. I didn't see any—the actual violence had subsided by the time we could get there with the horses.

Q. Did you see the result of any violence having occurred prior to the time you got there?

A. I don't believe I did, sir.

Q. Now, were you along with the other law enforcement officers able to dispel that riot?

A. We dispersed the crowd after having pushed them back across the street, and eventually the crowd broke up, and we brought our mounted and other officers back to the

Court House where they remained until about twelve that night.

Q. Now, Sheriff, when did the next riot occur after the [fol. 81] Saturday at the Saturday at the Greyhound Station in Montgomery?

A. In the early part of the night on Sunday night.

Q. And where was that?

A. That was in the area of a church located on Ripley and Columbus Streets.

Attorney Gray: Your Honor, may the Record show that we have a continuous objection to all of this testimony with reference to these events which occurred prior to the date of this occurrence?

The Court: Let the Record so show. And the Court has held, a jury not being present, if it is connected up then the Court will allow it in; if it is not connected up, it will go out.

By Deputy Solicitor Riggs:

Q. Now, Sheriff, what time of day did that riot occur?

A. I don't remember the actual time of day, but it was dark. In the early part of the night, on Sunday night. It was dark when I arrived at the scene.

Q. And what did you see when you arrived?

A. Well, as close to the intersection as the group I was with could get was Madison Avenue. We had to leave our cars at Madison Avenue and walk down to the area. And I don't know, I would be guessing at the crowd. And we met other law enforcements there, and remained there throughout the night.

Q. Well, was there a crowd there?

A. Yes, sir, close to—I don't know how many—there was over a thousand people, well over a thousand.

Q. What was that crowd doing at the time you arrived?

A. Well, I saw one car burning in the street which had been turned over. I saw a good many people throwing objects, bricks, and what not. And we, the City Police, Highway Patrol, and National Guardsmen when they arrived, we dispersed everyone who didn't have any business in that area.

Q. Were any law enforcement officers other than local officers present at that Sunday night riot?

A. Yes, sir.

[fol. 82] Q. Who?

A. I don't know how many it was, but I know it was over two or three hundred people known to us only as U. S. Marshals. They never did identify themselves to us, but we learned they were U. S. Marshals.

Q. All right, sir. Now, were you able to disperse that crowd?

A. We were, sir.

Q. Over how long a period of time did this Sunday night riot take place?

A. Well, actually I don't know the exact time it started, but we were up there, I imagine, close to an hour before we could get the area and around the church all cleared and get people on their way.

Q. All right, sir. Did any other riots take place in Montgomery County between that Sunday night riot and the time these defendants were arrested?

A. Things were happening so fast, those are the only two I can really recall.

Q. What church was it?

A. I don't know the name of the denomination, but I know it by being Rev. Abernathy's church.

Q. Is it a white church or colored?

A. It is a colored church.

Q. And is Ralph Abernathy one of the defendants in this case?

A. I believe he is, yes, sir. I know he is.

Q. Do you know whether or not he was present that night?

A. No, sir, I can't say. I never did enter the church, I never did see Rev. Abernathy that night, sir.

Q. Now, to go back a minute to the crowd outside. What was the predominant race among that crowd outside?

A. I would say it was predominantly white.

Q. In your best judgment was the crowd outside of that church Sunday night a peaceful crowd or a hostile crowd?

A. In my opinion they were hostile.

Q. All right, sir. Now, between this Sunday night riot and the time these eleven defendants were arrested did [fol. 83] other groups of Freedom Riders come into Montgomery?

A. Yes, sir.

Q. How many groups, if you know?

A. I don't know, sir. We received our orders from General Graham and handed them on down. We had Deputy Sheriffs, National Guardsmen, Highway Patrol and other officers working and trying our best to be at the place on the arrival of all notified people who were on the bus as Freedom Riders.

Q. Did you have crowds outside of the bus stations at any time you went to handle any other arrival or departure of Freedom Riders between Sunday night and Thursday morning?

A. No, sir. There were a few gathered around previous to Thursday morning, but nothing we thought would cause any trouble.

Q. All right, sir. To go back now, Sheriff, to Thursday morning, did you know prior to the time you went to the bus station a group of Freedom Riders was planning to depart that morning?

A. Yes, sir.

Q. How did you know?

A. We had notice through the Military Officers who were escorting a group from Rev. Abernathy's house to the bus station.

Q. All right, sir. And was it as a result of that notice that you went to the bus station?

A. Yes, it was.

Q. All right. Now, did you observe any overt act on the part of any members of that group, that crowd down at the bus station on Thursday morning which would indicate the hostility of the crowd?

A. Yes, sir. The Colonel in command of the troops down there, Colonel Snell, removed several white people out of the bus station to—I remember distinctly, I was near the door—he just handed them to the Sergeant and the Sergeant just pushed them on out on the street and would not let them back in.

Q. Now, did you observe why he did that?

A. Yes, sir.

Q. Why?

[fol. 84] A. They had purchased a cup of coffee at the time I saw them, had a cup of coffee apiece, and were walking along the stools and pouring coffee where people sat at the counter, pouring coffee on the stools.

Q. Did they appear, in your best judgment, to be belligerent?

A. It was my idea they were people in there looking for trouble. That's why the Colonel got them on out of the way.

Q. All right, sir. Now, did you yourself make the decision to arrest these eleven defendants, or was that made by somebody else?

A. It was made at that time by the Commanding Officer of the whole law enforcement of Montgomery County, General Graham, through his officer next to him, Colonel Poarch. I worked under General Graham's command through Colonel Poarch.

Q. Well, what caused you to actually make the arrests?

A. Colonel Poarch gave me the nod, which at any time I watched him when he wanted a crowd removed, we removed them or placed them under arrest.

Q. All right, sir. And did Colonel Poarch give you a nod which caused you then to go and arrest the eleven defendants?

A. Yes, sir.

Q. In this case?

A. Right.

Q. And what did you do with them after you arrested them?

A. I touched each person in the group and told him he was under arrest for breach of the peace, and I asked him to arise and go out the back door where other officers placed them in what is really a transfer wagon we have and brought them to the County Jail.

Q. And were all of the defendants taken to the County Jail at that time?

A. Right, sir.

Q. And were they fingerprinted and identified at the time they were taken to the jail?

A. Yes, sir.

Q. Now, Sheriff, was Joseph Charles Jones one of the defendants who was arrested on that morning?

Attorney Gray: Your Honor, we object to that unless [fol. 85] he can identify Joseph Charles Jones.

Deputy Solicitor Smith: He didn't ask him to identify him at this time, he only asked him whether or not those persons brought from the bus station to the jail were fingerprinted after arrest and identified, whether or not those identifications were the same as to all in each of these complaints.

Attorney Gray: That is just as to names.

Deputy Solicitor Smith: We are coming to the identification at a later time, but at this time we are asking the Sheriff, if the Court please, if those people that were arrested were identified in the Office of the Sheriff as to names which appear on each of these complaints.

Attorney Gray: Your Honor, we are still objecting unless he knows who they are.

The Court: Well, if he knows that those people were arrested, whether he could identify them or not, I will let him answer if he knows whether he arrested them, and he can ask him then whether he can identify them.

The Witness: I state that eleven people were brought up to the jail, and they were not identified until they got to the jail, and I at that time made a list of their names. And as far as picking them out from a group, I doubt very much after this long a time I could do it.

By Deputy Solicitor Riggs:

Q. Did you yourself make a list of the names?

A. Yes, sir.

Q. As they identified themselves up there?

A. No, sir. I got them later from the Chief Warden, the names.

Q. All right. Was Joseph Charles Jones one of the defendants?

Attorney Gray: We object, Your Honor, unless he can show us, produce that particular list where he would know who those persons are. This is absolutely leading the wit-

ness. He can ask him who did he arrest. But to end up by calling a person's name, name by name and ask him did he do it, that is leading.

[fol. 86] By Deputy Solicitor Riggs:

Q. All right. Sheriff, who did you arrest? Do you need the Court files to refresh your recollection? They are here.

Attorney Gray: We object.

The Court: Overrule your objection.

The Witness: I arrested eleven defendants who identified themselves after we arrived at the County Jail. I could guess at the names now.

By Deputy Solicitor Riggs:

Q. All right, sir. If you need these Court files now to refresh your recollection as to the names, would you look through them and give the names of the eleven people who are here who were arrested?

Attorney Gray: Your Honor, we are going to object unless he can testify he prepared those files and he knows that those are the same files that were, in fact, prepared at that time.

Deputy Solicitor Smith: Your Honor, we submit this is repetitious. The Court has ruled, I think, on this.

The Court: I ruled that unless he can take that list that somebody else prepared, I will rule with him.

Deputy Solicitor Riggs: All right. Then I will go to the warrants. He signed the warrants.

By Deputy Solicitor Riggs:

Q. Now, let me take out each warrant, Sheriff, and to refresh your recollection was the warrant signed by you as to the name of each defendant?

A. One of the defendants brought up from the Trailways Bus Station was Rev. Ralph D. Abernathy, and I signed the warrant on Ralph D. Abernathy.

Another one of the people brought up from the Trailways Bus Station was William S. Coffin, Jr., and I signed the warrant on Coffin.

I signed a warrant on Clyde L. Carter, who gave his name to us after he reached the County Jail from the bus station.

I also signed the warrant for disorderly conduct and unlawful assembly against Joseph Charles Jones.

[fol. 87] By the Court:

Q. Was he brought up from the station?

A. Brought up from the Trailways Bus Station in a group of eleven people.

And I signed a warrant for disorderly conduct and unlawful assembly against Bernard S. Lee, who was brought up from the bus station where he had been placed under arrest.

I signed a warrant against John David MacGuire, alias Maguire, for disorderly conduct and unlawful assembly at the Trailways Bus Station, who was brought up to the Montgomery County Jail.

I signed a disorderly conduct and unlawful assembly warrant before Judge Alex Marks against Gaylord B. Noyce, and he was brought in the group from the Greyhound Bus Station to the Montgomery County Jail.

By Deputy Solicitor Riggs:

Q. Was that the Greyhound Bus Station?

A. I mean the Trailways Bus Station.

I signed a warrant for disorderly conduct and unlawful assembly against Fred L. Shuttlesworth, who was arrested by me at the Trailways Bus Station and brought to the Montgomery County Jail.

I also signed a warrant for disorderly conduct and unlawful assembly against George B. Smith, who was arrested at the Trailways Bus Station and brought immediately to the Montgomery County Jail.

I also signed a disorderly conduct and unlawful assembly warrant before Judge Alex Marks against David E. Swift, who I arrested at the Trailways Bus Station and confined in the Montgomery County Jail.

I also signed a warrant for disorderly conduct and unlawful assembly against Wyatt Tee Walker, who was arrested

at the Trailways Bus Station and brought to the Montgomery County Jail.

Attorney Pollak: Your Honor, I hope it may be clear on the Record that Sheriff Butler's testimony with respect to these arrests and bringing up from the station was all [fol. 88] on the basis of the refreshing of his recollection pursuant to the reading of these warrants.

The Court: Well, let me ask him.

By the Court:

Q. You don't have to be refreshed on whether you signed these warrants, or not, do you?

A. No, sir. I signed the warrants in every case that was arrested down there that morning.

Q. Let me ask you this question to clear it up. Are any of the men out there, those eleven men, are any of those ones you didn't arrest at the bus station?

A. I don't see any on the front row, Your Honor, that were not arrested. To call them all individually by name would be a guess after that long period of time.

Q. Let me ask you another question. Didn't some of them stay in jail awhile?

A. They did, sir.

Q. How many?

A. I believe—I can't recall, I have to look at the book, Judge—but over half of them stayed in jail a good while.

Q. How many of them do you know personally? I will ask you that question.

A. I could name, I believe, five that I think I would be right on, Your Honor.

Q. Name them.

A. Ralph Abernathy, sitting with his knees crossed and his hands across his knees on the bench. Coffin is sitting next to him. And—I may be wrong here—I believe Shuttlesworth is next, and Wyatt Tee Walker. It has been a good while since I have seen some of them. And Bernard Lee—I am just guessing at him—would be the corner facing the Judge to the left on the bench. The other names—Maguire—I pick him out. I skipped one getting Mr. Maguire. He is the third to the right on the front bench. The others

would be purely a matter of guess as to their names. I identify them, and I have seen them before, but it is fixed [fol. 89] on my part that they were in the group of eleven arrested at the Trailways Bus Station, but fitting the names to them right now at this time, I don't believe I could do it.

Q. They are the ones that you arrested, and whether you can name them by name, or not, they were the ones down there and you arrested them and swore out a warrant for each of them?

A. I did, sir.

Attorney Pollak: Your Honor, I hope that I am sure it is clear what I said is in no way critical of Sheriff Butler's recollection on the province that he can personally remember as many of the defendants as he can, because the Record is merely a written document, I wanted to get it clear on the Record that for the balance of the defendants he doesn't personally remember; his recollection was refreshed through the warrants he executed.

The Court: All right.

By the Court:

Q. But after looking the warrants over you do remember you signed each one of them?

A. I did, sir. I signed each one of them.

Q. The ones you signed for were those who were present at that time?

A. They were all in a group, and brought to the jail in a group.

Q. Arrested down there and brought up?

A. Yes, sir.

Deputy Solicitor Riggs: We have no further questions, Your Honor.

The Court: Well, let me ask him a question.

By the Court:

Q. What did you arrest them for, what were they doing?

A. Well, Judge, if you really want to know, I arrested them because I received an order to arrest them.

Q. From whom?

A. Colonel Graham through Colonel Poarch.

The Court: All right. That is all then.

Attorney Pollak: I want to object to the answer as the witness gave it, Your Honor. The answer is a hearsay statement.

[fol. 90] The Court: Well, I asked him why he arrested them and he said he arrested them under orders. He would have to do that. As I understand, we were under martial rule then and he had to take orders from whoever was in command.

Attorney Pollak: Well, Your Honor, that is not the question I had in mind.

The Court: Well, let me ask this.

By the Court:

Q. Did you see them do anything?

A. Yes, sir, I did. I saw them do something that I thought might cause a riot.

Q. What was it?

A. They came in as a mixed crowd and immediately sat down and ordered coffee at a white lunch counter. At that time they were arrested.

Cross examination.

By Attorney Gray:

Q. Mr. Butler, I think you testified a few moments ago that you saw these three persons, these white men who were removed from the bus terminal?

A. I saw two, personally saw two escorted out of the bus terminal, escorted by military personnel.

Q. Now, will you tell us, sir, whether or not you saw them do anything?

A. As I testified just awhile ago, I saw them pour coffee on stools at the counter in the Trailways Bus Station.

Q. Do you remember, Mr. Butler, testifying when we tried this case in the Court of Common Pleas?

A. I remember testifying, but if I had the exact words I could refresh my knowledge which you have there before you.

Q. All right. Let me refresh your recollection, sir. I believe on cross examination I asked you: "Q. Did you see these three persons—I think you referred to Colonel Poarch escorting three white men out of the terminal?" And to that the Record shows you said no. "The three white people I saw being escorted by the military personnel, the officer in charge of that group was Colonel Snell out of Opelika." [fol. 91] Is that correct?

A. I remember seeing Colonel Snell move some male white personnel out of the terminal—the Trailways Bus Station—and as he got to the door Colonel Snell turned around and I saw a Sergeant behind him, and that is as well as I can remember it.

Q. Then I think I further asked you, sir, in these words: "Q. Then, sir, do you know who ordered them out?" And you answered at that time: "No, I don't." Do you remember that, sir?

A. Well, as far as hearing anybody give a direct order to move them, I saw Colonel Snell with them in front of him going toward the front door toward the street, and I hadn't heard an order.

Q. Then I believe I further asked you at that time: "Q. Do you know what they were doing?" Do you remember me asking you that?

A. No, I don't.

Q. And your answer at that time, on page 49 of the Record that was taken down: "No, I don't." Now, do you testify now that you do know what they were doing?

A. I don't know that you and I are talking about the same individuals. I saw two individuals that Colonel Snell escorted in my sight. They had poured coffee on the stools. Several other people were right in the vicinity and I don't know whether—

Q. Now, are you testifying when you say that they poured coffee on the stools from what you saw or from what you know Colonel Poarch testified to?

A. I am only testifying to what I saw.

Q. All right. And, sir, I believe you also testified at the other trial with reference to the size of the crowd outside of the terminal, outside of the Trailways Bus Terminal, on

the day these persons were arrested. I believe you testified a few moments ago there were approximately four hundred or five hundred people outside of the terminal; is that correct, sir?

A. As I recall, just a guess walking down, I made an estimate. I believe awhile ago I did say in my opinion there were four or five hundred people.

[fol. 92] Q. And that is just a guess, isn't it, sir?

A. Well, an estimate, I believe is a guess.

Q. Could it be, say, three hundred or three hundred and fifty instead of four or five hundred?

Deputy Solicitor Smith: We object to this as being argumentative. He has answered the question.

The Court: Overrule your objection. He has a right to cross examine him.

The Witness: I made an estimate on the way down there. I could be over or under. But it is my best judgment it was four or five hundred people in the crowd.

By Attorney Gray:

Q. And further, I believe you testified, and I would like to refresh your recollection from page 35 of the transcript of your testimony which was heard before, on cross examination I believe I asked: "Q. All right, sir. What sort of crowd was outside of the bus station at that time?" At least, that is what Mr. Riggs asked you. And you answered according to the Record: "A. Well, sir, it would be just a rough guess on my part, coming to the bus station the block, the entire block, was blocked off by guardsmen on the bus side which would be the west side of the street. At least three hundred to three hundred and fifty people in sight of the bus station that I saw when I came up." Would you say that was a fair estimate, three hundred to three hundred and fifty people outside of the bus terminal?

A. Well, I hadn't seen this crowd, and hadn't been asked but once, but what I testified was as near as I could get at it before.

Q. So actually what you are testifying with reference to the size of the crowd was an estimate, and from your testimony in that case and this case it could go from, your estimate may be from a hundred to two hundred off?

A. It could be. It is just an estimate. It is the largest crowd I had seen since the previous Saturday and Sunday night gathered around any point.

Q. From three hundred to five hundred. Then, sir, [fol. 93] couldn't your testimony also be wrong that many the other way, say from fifty to three hundred, as well as from three hundred to five hundred?

A. My estimate could have been wrong, but here and there on the other testimony too, I estimated the crowd as best I could just guessing at the crowd.

Q. Now, if you will, let's go back. I believe you testified that over our objection that when these persons came in on Saturday that a riot took place—if I am wrong, please correct me—and I think you said the cause of this riot was the Freedom Riders; is that correct?

A. Well, I don't recall—if Mr. Lewis would read it back —I didn't say that these people came in on Saturday.

Q. No. I mean a group of Freedom Riders came in on Saturday?

A. That's right.

Q. And didn't you testify as to why these people were outside of the bus terminal?

A. I don't believe I did.

Q. Do you know why they were outside?

A. I am guessing again. My guess is that they were there to meet people coming in from Birmingham, and they did before our group, before the group I was with, could get there, and an incident took place. Many times we had stand-bys all day expecting a crowd to be there and felt something would happen, and this time it happened before I could get up there.

Q. Now, sir, will you tell us whether or not in your opinion as a law enforcement officer; did the presence of these so-called Freedom Riders provoke that mob outside of the bus terminal on that Saturday?

A. Well, I beleive it would be common sense, if the Freedom Riders hadn't appeared there I don't think the crowd would have appeared.

Q. So then the Freedom Riders coming in on that Saturday, by coming in to Montgomery, their conduct then was calculated to create a breach of the peace, wasn't it sir?

A. I think at that time the breach of the peace was broken on both sides, those people coming in to Montgomery and the other people that met them there. I wasn't there at the time, I heard it later, it is hearsay, that a fight took [fol. 94] place. Had I been there I would have tried to prevent a fight or made arrests if I could find the people doing the fighting.

Q. Did you arrest the Freedom Riders when they came in then if their conduct was such to create a disturbance of the peace?

A. The only arrests I made of Freedom Riders was the eleven at the Trailways Bus Station, I believe, on Thursday, in the latter part of May, I believe the 24th or 25th. I don't remember.

Q. Now, I think you also testified, sir, to some instances that occurred at the church. Will you again tell us in your opinion as a law enforcement officer what caused the disturbance there?

A. Well, as a law enforcement officer and as an individual citizen I don't know the cause of the whole thing. We only acted after it started to try to keep down people, property from being destroyed or hurt.

Q. So then you are saying that you don't really know the cause of any of these disturbances?

A. It is my guess that the crowds were gathered in objection to the Freedom Riders coming to Montgomery. We had not in my experience in law enforcement had such instances to happen until these bus riders came here.

Q. Now, will you tell us, sir, whether or not the conduct of those persons on the inside of the church was such as would tend to create a breach of the peace?

A. I believe I testified on direct examination that I did not enter the church that night, I stayed on the outside. And as far as testifying to something I didn't see, I couldn't.

Q. Then would you say in your opinion as far as you know that their conduct was not such as to create a breach of the peace?

Deputy Solicitor Smith: We object to that question, if the Court please. He has already answered he didn't know what went on in the church.

The Court: Well, if he wasn't in there, I sustain the objection. He couldn't tell what went on inside.

[fol. 95] By Attorney Gray:

Q. Now, were you in the bus station, say, two or three days before this event occurred when some more Freedom Riders did enter the Trailways Bus Terminal and were served and did leave?

A. I was in there on one other occasion. We were in and out, and days run into nights, and I couldn't tell you what day I was there. I was there one other time other than this, and a group of Freedom Riders escorted by military personnel and civilian personnel caught a bus leaving Montgomery. On another occasion I was parked a block away from the Trailways Bus Station in a car equipped with radio to keep General Graham advised to the traffic going out Bell Street, which I did.

Q. In your official capacity, sir, as Sheriff of this county, you do know that there was a group of Freedom Riders who did use the facilities at the Trailways Bus Terminal before these persons and they were served; isn't that correct?

A. By word of mouth I was told that, but actually seeing it, I did not.

Q. But you have official knowledge of that?

A. Oh, yes. I was told they did.

Q. And your official knowledge, I believe, was two groups on the same day used the facilities at the Trailways Bus Terminal, were served, boarded the bus and escorted to the Mississippi line?

A. I can't say, but when an incident like that happened it was passed on to me by Deputy Sheriffs and other officers. We all work together. It is my understanding at a previous occasion a mixed group of white and colored had been served at the Trailways Bus Station.

Q. And they had not been arrested?

A. I wasn't in there and I didn't see it. It is my understanding they were not arrested.

Q. All right. Sir, can you tell the Court, of course, if they were not arrested you were not given any orders to arrest anyone?

A. No. I arrested the ones I was given orders to.

Q. Do you know why you were ordered to arrest this [fol. 96] group of Freedom Riders and not ordered to arrest the other group of Freedom Riders?

Deputy Solicitor Smith: Now, Your Honor, he testified he wasn't present when the other group was arrested.

Attorney Gray: He was present on one occasion.

Deputy Solicitor Smith: He wasn't present on both occasions when they were permitted service.

The Court: I will let him answer, if he knows.

The Witness: I was present the first time I saw a mixed group being served at the Trailways Bus Station, Colonel Poarch gave me a nod which I understood and I made an arrest of eleven, I believe, people there. At no other time did I actually see an incident like this occur during these few days.

By Attorney Gray:

Q. Now, will you tell us, sir, did you prior to the time you arrested these defendants—let me withdraw that. How long have you been Sheriff of this county?

A. This is my second term as Sheriff.

Q. And as Sheriff have you not on various occasions when you were present when you saw persons under conditions where their conduct may create a situation, have you ever asked them to move on or not to do what they are doing?

A. I have many times asked people to move on. And every circumstance is a little bit different and don't have the same pattern. You may do something one time and something else the next.

Q. In this instance, sir, did you tell these persons any time that their conduct was such that it may create a disturbance and ask them to leave?

A. I did not.

Q. Did anyone in your presence ask these defendants to leave or tell them that their conduct may be of such as to create a breach of the peace prior to the time they were arrested?

A. I heard no one tell them that.

Q. And if anyone had told them that, you were within hearing distance, weren't you?

[fol. 97] A. I believe I could have heard it. I was standing about the center of the Trailways Bus Station about eight or ten feet from the counter where the group was.

Q. Did they have to pass you in order to get to the lunch counter?

A. I was standing off to their left as they left the ticket office, and as far as passing me, I was about the center of the building and they had to go just beyond where I was standing. Part of them hadn't passed me before they were seated. I was off to the left about eight or ten feet. And the lunch counter is on the south side of the Trailways Bus Station and bends around the interior of the building.

Q. I think, Mr. Butler, you testified you signed these warrants yourself?

A. I did.

Q. And I take it you signed these warrants based on personal knowledge of things you had seen at the bus terminal; is that correct?

A. I signed the warrants and asked Judge Marks to write them up, which he did, for disorderly conduct.

Q. And this was based on acts you had seen them do; is that correct?

A. That is right.

Q. All right, sir. Let's take the case of Ralph D. Abernathy. The warrant charges that Ralph D. Abernathy did disturb the peace of others by violent, profane, indecent and profane language, etc., will you tell the Court whether—

Deputy Solicitor Smith: Read all of it, don't read a part of it.

Attorney Gray: I am going to come back and take every part one by one.

By Attorney Gray:

Q. Will you tell the Court exactly what the conduct was on the part of Rev. Abernathy in your opinion, was violent?

Deputy Solicitor Riggs: We object to that, if the Court please. These cases are being prosecuted on the Solicitor's Complaints and they do not charge he is violent.

Attorney Gray: Your Honor, the foundation of any case [fol. 98] on appeal from this Court is the affidavit, and I am going back to the source, and certainly the complaint can't vary from—

The Court: I will let you go ahead, if it is a different category I will let him ask when he filed it.

The Witness: Ralph Abernathy, along with the group, and I saw no violence of any that were arrested, but in my opinion when they sat down with a mixed crowd at a white counter the crowd outside had grown, I couldn't hear what they were saying, the noise inside and outside was conflicting, and at that time I heard an outburst from the outside. In my opinion that is why they were placed under arrest and removed from the scene.

By Attorney Gray:

Q. All right. In other words, this defendant Abernathy and not any of the other ten defendants who were arrested at the same time did nothing violent, nothing profane, and nothing indecent, nothing offensive or boisterous, but rather by his presence that was conduct calculated to create a breach of the peace; am I understanding you correctly?

Deputy Solicitor Riggs: Now, we object to that, if the Court please. He has not testified that the conduct of these defendants was not indecent or offensive or—

Attorney Gray: Well, I will ask him.

By Attorney Gray:

Q. Will you tell us whether or not either of their conduct was offensive?

A. In my opinion their conduct at that time could have very well caused a riot, their actions they took coming in integrating a white counter at that time.

Q. Would you say that that then would amount to offensive conduct?

A. Well, I just repeat what I said. As far as any offensive conduct, any cursing going on, or physical violence, I did not see any of this group commit such.

Q. And you saw them make no loud, boisterous noise?

A. I did not.

Q. Nor did you see them do anything indecent in your opinion?

A. I did not.

[fol. 99] Q. Now, I think you further said, sir, in the warrant of Rev. Abernathy, and in the other affidavits, said that these persons did come into Montgomery, Alabama, while it was subject to martial law. Do you know whether or not Abernathy came into Montgomery after martial law was declared, or was he already in the city at that time?

A. As far as keeping up with when he came, or when he entered or re-entered the city, I don't know. I know he lives here. And I am sure he along with other citizens here knew what was happening here.

Q. And just one other question about the warrant. You further say in this warrant he did willfully and intentionally attempt to test the segregation laws and customs by seeking service at a public lunch counter with a racially mixed group. As the chief law enforcement officer of this county, sir, can you tell us what particular laws you had in mind, if any?

A. I don't know what particular Code it would be, but I am sure, lawyer, that you know our lunch stands, cafes and other places are segregated.

Deputy Solicitor Smith: I want to object on the Record at this time too. These prosecutions are not based on these warrants, but on the Solicitor's information which is filed in each of the particular cases.

Attorney Gray: The complaint, Your Honor, has to be based on the affidavit.

Deputy Solicitor Smith: It does not have to be based on the affidavit. This is the Solicitor's information.

The Court: These cases when they are appealed are tried de novo, and the Court knows the Sheriff is no lawyer, he didn't prepare them, they were prepared by somebody

in Judge Marks' office, or in this instance in the Solicitor's office. The phraseology is attended to by the lawyers.

Deputy Solicitor Smith: I don't want the Record to appear confusing. In reading the Record we don't want it to appear that these prosecutions are based on these warrants and affidavits which the lawyer is now questioning the wit- [fol. 100] ness on, but rather on the Solicitor's information which is on file in each individual case.

Attorney Gray: I think a question of law is involved. I think we all know that an unsworn Solicitor's Complaint cannot be the basis of a criminal prosecution.

Deputy Solicitor Smith: Well, are you saying that these Solicitor's Complaints are not the basis of these prosecutions?

Attorney Gray: I am saying that the basis of—

The Court: The basis of the prosecution is the Solicitor's Complaint, but it is based on a case that is tried in a prior Court.

By Attorney Gray:

Q. Just one other question about the warrant and I will be through. Will you tell us who did prepare these warrants, or did you tell us that. I don't know.

A. I did tell you that at any time we want some legal advice I call on the Solicitor's office to advise. My recollection is that the warrants were worded by Judge Marks with the assistance of our Solicitor and a lawyer from Anniston, Alabama, Colonel Poarch, who was in Service at that time.

Q. Will you tell us, sir, when were these warrants signed by you?

A. Immediately after we had got the crowd up in the jail and secured the names, I went to Judge Marks' office.

Q. So at the time they were arrested you were not acting on a warrant?

A. At the time, no. I got the warrants after we got them to the jail.

Q. All right. Do you know whether or not Colonel Poarch's orders to you to arrest these persons were based on an order issued by General Graham?

A. As far as knowing that, I absolutely don't know. General Graham was in the vicinity a few feet from me, and so was Colonel Poarch. I was watching and taking my orders as Acting Sheriff of Montgomery County at that time. I was taking my orders directly from Lieutenant Colonel Poarch.

Q. Did General Graham also order you to make these arrests?

A. No. I didn't receive my orders from General Graham. I am sure they came from him, but my orders to arrest them came from Colonel Poarch.

[fol. 101] Q. I think you mentioned that there was some pre-arranged signal between you and Colonel Poarch as to when the arrests would be made and apparently who. Will you tell us when that pre-arranged signal set up?

A. I couldn't actually tell you the definite time, but after daylight on the Monday previous right after we spent all night on the streets near Abernathy's church, and had been notified by military personnel that the Governor had placed Montgomery County under martial rule, we met at the National Guard Headquarters on Madison Avenue, and at that time I was introduced to the officers, and at that time I was to take orders from Colonel Poarch, who worked hand and hand with us, and he asked me at that time if I would watch him in a crowd when he wanted a crowd moved on he would give me the orders what to do without hollering out. And we had it worked out on several different occasions. This is the first time we had placed anybody under arrest. We moved other crowds on.

Q. Now, did you attempt, or did the military personnel attempt to move the crowd outside of the bus station at this time?

A. Now, Gray, which crowd are you referring to?

Q. At the time of this arrest was there a crowd outside of the bus terminal?

A. There was.

Q. Did you or any of your Deputies, or any of the military personnel attempt to disperse that crowd?

A. I was inside of the bus station, and as to the physical happenings on the outside I couldn't testify, because I

could look out the front window and still see a line of soldiers on the sidewalk, and beyond them was a crowd of people. As to what was taking place on the outside, I don't think I could testify.

Q. Will you tell us exactly what signal Colonel Poarch gave you and how did you know exactly who to arrest?

A. Well, it wasn't hard to tell who was creating the trouble there. Shall I go on?

Q. Yes, sir.

A. Colonel Poarch when they sat down in a mixed group, [fol. 102] he pointed to the line sitting down there and a few standing up in the corner. And I knew by then he wanted them out.

Q. And you arrested—

A. Shall I go on?

Q. Yes, sir.

A. When I passed Colonel Poarch he said, "Bring them out the rear door." I knew by that he wanted them arrested and removed from the place.

Q. Now, did he ask you to arrest these white men who were pouring coffee on the stools?

A. If you are familiar—you probably are not, never having been in the Army—if you are familiar with military personnel, when you are acting under them and they give you orders you do that. The only time I was ordered to make an arrest I did it.

Q. And they didn't order you to arrest these white men?

A. They did not.

Q. They were white men who poured coffee on the stools?

A. That's right. The two I saw pouring coffee on the stools were removed from the place. I don't know whether they were arrested, or not. The last time I saw them a Sergeant of the National Guard had them going out the front door. I did not arrest them.

Q. You did not?

A. No.

Q. In your opinion, was that conduct calculated to create a breach of the peace?

A. I think they were there to cause trouble. That is my opinion.

Q. But they were permitted to leave even though they did cause trouble.

A. I wasn't ordered to make the arrests and I didn't.

Q. Now, were all of these defendants seated at the time you arrested them?

A. No. As I stated twice before, the biggest portion of them had sat down, and three or four on the end next to the ticket counter.

Q. I think you did say, sir, that in your opinion their conduct was calculated to create a disturbance, did you not?

A. I believe I said in my opinion that their actions at [fol. 103] that time, the tense moment Montgomery was in, could have very easily created a riot at that time and place.

Q. Now, would you say that the conduct, actually sitting at the stools eating, was what created it?

A. As far as pin-pointing what created it, I couldn't but guess, but when they came in and sat down in plain view so the crowd could see part of them from the outside, a mixed crowd sitting at a white counter, when the noise grew louder, at that time I was ordered to arrest them and remove them from the place. And I checked back within an hour and the crowd was all gone. So I imagine that is why the crowd gathered there.

Q. Will you tell us, sir, whether you have ever had occasion to arrest someone, o whether their own safety was threatened, to either take them into protective custody or hold them—

Deputy Solicitor Smith: We object to the question. There is no such law in the State of Alabama.

Attorney Gray: Will you please let me finish my question?

Deputy Solicitor Smith: I didn't mean to interrupt you.

By Attorney Gray:

Q. Or have you ever held anyone for investigation?

Deputy Solicitor Smith: Are you through with the question?

Attorney Gray: I am through, but I want the Sheriff to answer it.

Deputy Solicitor Smith: I object to the question. There is no such provision in Alabama law as protective custody, and on that basis we object to it.

The Court: Sustain your objection.

By Attorney Gray:

Q. I am now asking, have you ever arrested anyone for investigation?

Deputy Solicitor Riggs: We object to that on the same ground, Your Honor.

[fol. 104] The Court: Overrule your objection.

The Witness: Every one we pick up and place in jail I secure a warrant because I am under bond and a lot of the officers are not, but the Sheriff and his Deputies are under bond.

By Attorney Gray:

Q. And as a law enforcement officer, sir, did you make any effort short of arresting these people to give them an opportunity to leave?

A. I believe I answered that before and I will be glad to again. I personally did not say any word to them until I placed them under arrest.

Q. Will you tell us, sir, what conduct required the arrest of those who hadn't reached the lunch counter?

A. Yes, I will be glad to. We had started out, and one or two of them, I couldn't tell you which ones it was, I said, "Are you with this group?" They said, "We are." I said, "Well, come on and join them."

Q. So the mere fact these were with the group was sufficient conduct calculated to create a breach of the peace?

A. No. As a law enforcement officer I did not want to leave one there who might get hurt by the crowd. We were removing the whole group to keep down the disturbance and I didn't want to leave any of them there whereby another incident like Saturday could have happened.

Q. Had you and Colonel Poarch had a conversation that morning prior to their arrest about the possibility of arresting these persons?

A. No. We had meetings all during the day. Whenever General Graham had something to tell us he would call us in and tell us, and that would be it.

Q. Were you present, sir, at the time we tried the case of Lewis versus Greyhound Corporation in Federal Court where you were one of the defendants?

A. Oh, I was present when the attorney representing me told me to be there, and I had talked to the Judge. I had a pretty bad burn on the face at the time and I didn't hear much of the testimony. The Judge excused me and had me on call.

Q. But you were there when General Graham testified, weren't you?

A. I heard part of General Graham's testimony. As to [fol. 105] remembering it, I don't know whether I do, or not.

Q. Do you remember his testifying to the effect that these persons were arrested because he became exasperated?

Deputy Solicitor Smith: We object.

The Court: Sustain your objection.

Attorney Pollak: Could we hear the basis of the objection?

The Court: I will be glad to tell you. The only way that could go on in, if General Graham had taken the Stand and denied it, then you could introduce it to impeach him, otherwise, you couldn't introduce it.

Attorney Pollak: Thank you, Your Honor.

The Court: General Graham could be called as a witness.

Attorney Gray: Oh, yes. One other thing. Would you tell us, sir, did you take all of this group to jail in the same wagon?

The Witness: I believe Mr. R. T. Alford was driving the vehicle that escorted the group arrested at the Trailways Bus Station, from that vicinity, followed by the Highway Patrol and other cars. They were brought in a truck that we transfer prisoners in. They were all brought in one group to the Montgomery County Jail.

By Attorney Gray:

Q. This mixed group was brought to the Montgomery County Jail mixed?

A. Well, they were all together when we arrested them, we brought them in one vehicle. You asked if they were mixed. They were all riding in the same vehicle.

Q. In other words, they were all together then?

A. They were all in the enclosed confinement by wood and steel operated by Mr. Alford.

Q. Will you tell us, sir, whether at this time and place in Montgomery County while it was under martial law to place this mixed group in a condition like that, wouldn't that be conduct tending to create a breach of the peace?

Deputy Solicitor Smith: We object to that question, if the Court please.

[fol. 106] Attorney Gray: That is a perfectly valid question on cross examination.

The Court: I will let him ask.

The Witness: This vehicle was used, and still being used, by the Sheriff's Office furnished us by the Board of Revenue of Montgomery County, and at that time I had told Mr. Alford to keep his radio on, if we needed him we would call him. Whenever we had radios on when that vehicle was cruising in any vicinity we might use it. That vehicle you can't see from the outside who might be in it. It is my belief had we placed them in an ordinary vehicle, or three or four automobiles, bricks, or what-not, might have hit the vehicle on leaving the bus station. If you want to know why it was used, that is why it was used.

Q. Will you just describe, sir, for the Record, the Trailways Bus Terminal?

A. Describe it?

Q. Yes, sir. Can you tell us how that bus terminal is situated?

A. Well, as best I can. I am not too familiar with it. But it is facing east, and you have a U-drive, all bus traffic comes in from the north side and out through the south end, and back into the back wall, which would be back to the

west wall, where they load and unload freight and passengers.

Q. And as you come in on the south side would you tell us—

A. The north side. Come into the station from the north end.

Q. As you come into the station there is, or there was then, a colored waiting room; isn't that correct?

A. No. At that time the colored waiting room, which is operated, I imagine, out of the same kitchen, had one window being inside of the other for the white, and then under the same roof on the back side coming out leading with the south side, was a colored restaurant back there.

Q. There was a colored waiting room with seating facilities?

A. That's right.

Q. And there was also a colored waiting room with eating [fol. 107] facilities; is that right?

A. That's right.

Q. And there were ticket booths in both waiting rooms?

A. Well, the ticket booths were across the back. Whether it extends on through them, or not, I am not sure. But I know you come in from the back and there are tickets to be purchased all along the right. It might extend through to the other room. I don't know.

Attorney Gray: Thank you. That's all.

Re-direct examination.

By Deputy Solicitor Riggs:

Q. Sheriff, the defense counsel has asked you if you requested these defendants to leave. In your judgment, would it have been safe to request them to leave, would it have been safe for them to request they leave the bus station unescorted?

A. No, sir, I don't think they should be turned loose on the street.

Q. Why not?

A. I think personal damage would have been to them, or any conveyance they might have tried to get in, but they could have been stoned or bricked or what-not, at that particular time.

Q. In your opinion, was it necessary for their own safety that they be taken into custody?

A. Yes, sir, to be removed from that place down there to prevent a riot, to prevent what could happen and what did happen to others at two previous times at the other station.

Q. Now, I believe you testified on direct examination that you got a call from the National Guard these people were coming to the station?

A. Yes, sir. We had a liaison officer acting Sheriff.

Q. Do you know who brought these defendants to the station that ~~morning~~?

A. I can't recall his name, but he is a Colonel in the National Guards though.

Q. They were National Guards?

A. Yes, sir. They were escorted by the National Guard.

Q. And I believe you testified that they came in the rear door?

A. Yes, sir. They made entrance as usual traffic does [fol. 108] from the north side—that is toward the Union Station they come in—and they parked at the rear and came in through the rear?

Q. Do passengers normally drive into the station and stop in the back as they come in the rear?

A. No, sir. The buses only use the drive. I have seen a few taxis bringing automobile parts and such as that to be shipped by bus coming in. Other than that, I don't remember seeing people drive in there.

Q. Do people use all the doors?

A. They park on the street, usually bus people.

Q. Do you know why these people were brought into the back door?

A. For their protection, I imagine, against the crowd that was on the outside.

Q. Now, defense counsel has also asked you of incidences about asking people to move on. Have you in the past

when we have had racial disturbances here in Montgomery arrested white people for disturbing the peace and unlawful assembly?

Attorney Gray: Your Honor, we object to that.

Deputy Solicitor Smith: He went into it on cross examination.

The Court: Overrule your objection. You went into the proposition of the two white men who were not arrested. If you had not, I would rule with you.

Attorney Gray: What I am concerned with, Your Honor, is the time and place. This happened on the same day. Now, they are asking about something that did not happen on that same day.

Deputy Solicitor Smith: You asked the question about protective custody.

Attorney Gray: If this happened the same day I have no objection, but over any long period of time I think it would be too far to go into.

The Court: If it happened during this racial trouble I will let him answer.

The Witness: Yes, sir. I have made previous arrests.

[fol. 109] By Deputy Solicitor Riggs:

Q. All right, sir. Now, one more question. In your best judgment, if the eleven defendants in this case had not been arrested at the time when they were arrested, was there danger that violence might break out and we might have a repetition of previous riots that we had?

Attorney Gray: We are going to object, Your Honor, because he said the reason he did it was that he was ordered to, and that's all.

The Court: Well, you went into asking him why he arrested them. I will let him answer.

Attorney Gray: It was on cross examination, Your Honor.

The Court: I know. But when you go into it you open up the door and anybody on the outside can come in. Go ahead.

Attorney Pollak: The question, Your Honor, sounds almost like a leading question.

The Court: Repeat the question again.

Deputy Solicitor Riggs: Mr. Lewis, will you read the question back?

(Previous question repeated as follows: "In your best judgment, if the eleven defendants in this case had not been arrested at the time when they were arrested, was there danger that violence might break out and we might have a repetition of previous riots that we had?")

By Deputy Solicitor Riggs:

Q. Will you answer that?

A. Because it was dangerous to put them out on the street.

Recross examination.

By Attorney Gray:

Q. You mentioned, I believe, on Re-Direct that it would have been dangerous for them to be put out on the street. In your judgment could they not have gone away from the bus terminal the same way they arrived?

A. Well, sure. But at the point of destination—I don't know whether the military would have dropped them in the [fol. 110] State of Alabama. They requested that they be protected. And as far as we could afford we were day and night watching after them. And they were led there by military State and County officers. And I don't know whether e could have taken them and turned them loose without some of them being hurt.

Q. And would you say that was because, as Judge Johnson found, the City police officers and the Police Department of the City of Montgomery had failed to enforce the law?

A. I can't say anything about Judge Johnson, and I am not going to.

The Court: Well, I can. Let Judge Johnson rule his Court and I am going to rule mine. His orders don't

amount to anything with me and I am sure mine don't with him.

Attorney Gray: The purpose of my question, Your Honor, was why these people couldn't have been put in—

The Court: Well, don't bring Judge Johnson into it.

By Attorney Gray:

Q. Could not these persons have been encouraged to board the bus instead of eating at the lunch counter and left town?

A. Well, what they could or couldn't have done, I really don't know. I personally did not talk with them until I placed them under arrest.

Attorney Gray: That is all.

Redirect examination.

By Deputy Solicitor Smith:

Q. If you know, answer this question. Would these people have gone and gotten on a bus and given up their request for service at the lunch counter if you had asked them to?

Attorney Gray: We object. There is no way in the world he could answer that.

The Court: All right. Sustain your objection.

[fol. 111] Floyd Mann, having been duly sworn, was examined and testified as follows:

Direct examination.

By Deputy Solicitor Riggs:

Q. Is this Mr. Floyd Mann?

A. Yes, sir.

Q. What is your occupation, please, sir?

A. Director of Public Safety, State of Alabama.

Q. And did you occupy that position on and around May 25th, 1961?

A. I did, yes.

Q. Were you present in the Trailways Bus Station on the morning of May 25th?

A. Yes, I was.

Q. Were you there when these eleven defendants were arrested?

A. I was.

Q. Did you have an opportunity while you were there to observe the people who were inside of the bus station?

A. I did.

Q. Were there a number of law enforcement people there?

A. Yes, sir.

Q. Were there people other than law enforcement people there?

A. Yes, sir.

Q. Can you give us your best estimate as to how many people there were who were not law enforcement people there in the bus terminal that morning?

A. I would estimate approximately about twenty-five.

Q. All right, sir. Did you have occasion to observe outside of the bus station at that time?

A. I did, before I entered the bus station.

Q. Were there military and law enforcement personnel out there?

A. Yes, sir.

Q. And were there people other than military and law enforcement personnel outside the bus station?

[fol. 112] A. Yes, sir,

Q. Can you estimate for us the number of people who were not military and law enforcement personnel outside the station at the time these arrests took place?

A. Do you mean in the immediate vicinity?

Q. Yes, sir.

A. I would estimate probably several hundred.

Q. All right, sir. Now, where did you first see these eleven defendants?

A. I first saw them when they were getting out of the automobiles, I believe.

Q. Where were they getting out of their automobiles?

A. At the bus station.

Q. Well, where in and around the bus station?

A. To my best judgment, I believe that they pulled—I am not positive about this—there were several groups that left prior to this group—they may have pulled in where the buses pull in to unload. I am not sure about that.

Q. What did they do after they got out of the vehicles in which they came to the bus station?

A. They entered the bus station.

Q. All right, sir. What did they do after that?

A. They entered the bus station. I believe some of them discussed possibly the tickets at the bus station counter. I believe some of them made phone calls, or in the process of making phone calls. And others, they went and were seated around the counter there to be served.

Q. All right, sir. Now, did you form an opinion as to the attitude of the group, the crowd that was outside of the bus station and inside?

A. No, sir, I did not.

Q. You did not?

A. No, sir.

Q. All right. Now, prior to these arrests there on May 25th had you observed racial disturbances in Montgomery [fol. 113] within a period of a week prior to that time?

A. Yes, sir.

Q. When was the first such disturbance?

A. On May the 20th, I believe. May the 20th at the bus station, the Greyhound Bus Terminal.

Q. Would that have been the Saturday preceding the Thursday on which these arrests took place?

A. Yes, sir.

Q. Will you tell us first how you happened to go to the Greyhound Bus Station on that Saturday?

Attorney Gray: Your Honor, we are going to object to this entire line of questioning as to what happened at this particular incident and ask the Court to rule that it is irrelevant to what happened some week or more later, and we think it has no basis in this trial.

The Court: I understand it wasn't quite a week later.

Deputy Solicitor Smith: Thursday following the preceding Saturday.

The Court: Thursday following Saturday, and the Court overrules your objection.

Attorney Gray: May I have an objection to the whole line of questioning with reference to it?

The Court: Well, I think you should make your objections, because if you didn't you would probably have an objection to the whole thing. There is a lot of it you wouldn't object to. All right. Let's go ahead.

By Deputy Solicitor Riggs:

Q. How did you happen to go to the Greyhound Bus Station on that Saturday morning?

A. Well, because I felt we had a law enforcement problem there.

Q. Did you get a report some group of Freedom Riders were coming in?

A. Yes, sir, I did.

Q. All right, sir. Did you get to the bus station before the Freedom Riders arrived?

A. No, sir, I didn't.

[fol. 114] Q. Do you know how long after they arrived?

A. I had passed the bus station prior to the arrival of this bus.

Q. All right, sir. What was happening when you went to the bus station?

A. When I went to the bus station?

Q. Yes, sir.

A. There had been some fights.

Q. Did you actually see any fights?

A. I did after I arrived there, yes, sir.

Q. And what did the fights consist, who was fighting whom?

A. Well, the first fights that I observed and intervened in was fights between the news media and a group of people. And then after that there was fighting between colored and whites there in front of the Post Office.

Q. Were any of the Freedom Riders who arrived on that bus on Saturday morning at the Greyhound Station injured?

A. Yes, they were.

Q. Now, did you observe any other racial disturbances after the one on Saturday morning?

A. Yes, I did.

Q. When was the next one?

A. The next one was approximately an hour after we thought this had quieted down at the bus station and had gone to some place, and I received information that they were fighting again at the bus station, and went back and had to carry several more to the hospital.

Q. This was after you thought the first riot had been dispelled.

A. That is right.

Q. All right, sir. And after that second one on Saturday morning when did the next racial disturbance take place?

A. On Sunday.

Q. And where did it take place?

A. In a church here in Montgomery.

Q. Do you know what church it was, where the church is located?

A. I know where it was located, but I don't think I can call the street.

Q. Do you know whether it was a white church or a Negro church?

[fol. 115] A. It was a colored church, yes, sir.

Q. Do you know what precipitated the riot on Sunday at the church?

Attorney Gray: Your Honor, we are going to object to the entire line of questioning with reference to what happened at the church on this occasion on the same ground we previously stated.

The Court: The Court overrules your objection.

The Witness: Well, we had Highway Patrolmen, about seventy to one hundred, standing by because we anticipated there probably would be trouble in view of what was happening and what we had experienced the day before, and when I arrived at the church this evening there was an automobile on fire, the United States Marshals were there with gas masks on, and it seemed to me a—people were throwing rocks or missiles at one another. Several thousand people there I would estimate.

By Deputy Solicitor Riggs:

Q. All right, sir. Do you know Ralph D. Abernathy?

A. Yes, sir, I do.

Q. Did you see him at that riot that Sunday night at that church?

A. Yes, sir, I did.

Q. Where did you see him?

A. I saw him on several occasions. I saw him inside of the church and outside of the church.

Q. On the occasions when you saw him was the riot going on?

A. At times, yes, sir.

Q. In the position where you were on the occasions when you saw Ralph D. Abernathy was he aware on those occasions a riot was going on outside?

A. He certainly was.

Q. Do you know whether Wyatt Tee Walker was present on that occasion?

A. Yes, he was.

Q. Do you know whether any of these other defendants were present at that Sunday night riot?

A. Rev. Shuttlesworth was there. I talked to him.

Q. Do you know where any of the other defendants were?

A. Bernard Lee was there. I talked to him.

[fol. 116] Q. Well, sir, were there any others?

A. I couldn't state positively.

Q. All right, sir. Was the noise of the disturbance such that these people could tell that a riot was going on outside?

A. Yes, sir.

Q. Let me go back to Sunday night for just a minute. How long did it take to quell the riot on Sunday night, if it was quelled?

A. I stayed there from eight o'clock that night, maybe before eight, until after five the next morning.

Q. And during the time that you were there—why did you stay? Let me ask you that way.

A. Well, the reason why I stayed was because there was some discussion about how we could get those people safely to their homes.

Q. Was that the people inside the church?

A. Right. And it was decided that the best way in view of darkness and what have you to see that they were securely gotten to their homes would be after daylight the next day.

Q. All right, sir. After the Sunday night disturbance were there any other racial disturbances in Montgomery prior to Thursday morning?

A. Well, I believe that during that period was when Rev. Seay was supposed to have been shot, and we received a call to that effect. It was during that period between Saturday and the following Sunday.

Q. All right, sir. And do you know of any other disturbances that took place between the Sunday night disturbance and Thursday morning on which these arrests were made?

A. Not that I can recall.

Q. Mr. Mann, at this Greyhound Bus Station riot on Saturday morning was it necessary for you to use any kind of weapons in breaking the riot up?

A. I thought so.

Q. Did you in fact use a pistol or other weapon?

A. I did.

Q. Did you personally intervene in a fight there at the Greyhound Bus Station where a white man was beating [fol. 117] a Negro man on the ground and pulled the white man off the Negro man?

Attorney Gray: Your Honor, we object. Now, we are going into a lot of detail.

The Court: Sustain your objection.

Deputy Solicitor Riggs: We have no further questions.

Cross examination.

By Attorney Gray:

Q. Mr. Mann, do you know back on Saturday's occurrence when the Freedom Riders came in, do you know what these Freedom Riders were doing?

A. What they were doing?

Q. Yes, sir.

A. I have no idea what they were doing.

Q. Had it come to your knowledge in your official capacity whether they were doing anything other than using the facilities of the bus company and the bus terminals on a non-racial basis?

A. It had come to my attention that they had had quite a bit of trouble in Birmingham, and our purpose was to secure their passage between Birmingham and Montgomery, Alabama.

Q. And the only thing you know that they were doing was simply riding the buses; is that correct? And using the facilities in the bus terminals?

A. Well, of course, as I stated before, I don't know what they were doing. It had certainly come to my attention that they were on what you might call a test ride through this area of the country.

Q. And the test ride simply included using the facilities of the bus terminal?

A. That is my understanding.

Q. Is it further your understanding they were interstate passengers?

A. Yes.

Q. Now, do you know whether or not any of these Freedom Riders were arrested when they arrived on that Saturday?

A. I didn't arrest any of them.

Q. Has it been called to your attention officially that any of them were arrested at that time?

[fol. 118] A. I don't believe it has to tell you the truth.

Q. Now, tell us, Mr. Mann, about up at the church on that Sunday night, what was going on inside of the church?

A. Well, what was going on on the inside?

Q. Yes, sir.

A. A meeting, I assume.

Q. Did you observe anything illegal about the meeting being held there?

A. I did not.

Q. Did you, or has it been called to your attention, any arrests were made of any of those persons inside the church?

A. As far as I know, there was not.

Q. And can you tell us about the crowd outside of the church, can you tell us basically the racial composition of that crowd, whether most white or most Negro?

A. I would say they were mostly white.

Q. Now, do you remember on Wednesday, the 25th of May, when some of the Freedom Riders left the city of Montgomery, were you in Montgomery at that time?

A. I was.

Q. Were you in the bus terminal, the Trailways Bus Terminal, at the time they arrived?

A. This group?

Q. No. Not this group, the day before, the morning of the day before?

A. I was.

Q. You were there?

A. I was.

Q. Will you describe to the Court what took place when the group arrived the day before these defendants arrived, what took place there?

A. Well, we were there to assist in getting those people from Montgomery to Mississippi. Our purpose was to have Highway Patrol cars preceding and following the bus. I don't recall anything that I observed that day other than just the unusual activity about the troops and law enforcement officers.

Q. Was this a racially mixed group that came in the ter-
[fol. 119] minal the day before?

A. I don't recall whether that was a mixed group, or not.

Q. Did they use the facilities of the white waiting room there?

A. I believe they entered the white waiting room.

Q. And they bought tickets?

A. I couldn't say.

Q. Do you know whether they ate at the lunch counter?

A. I couldn't say.

Q. Before they left?

A. I couldn't say.

Q. Do you recall where you were?

A. No, I do not. I believe I was out front lining up patrol cars.

Q. Do you remember later on in the day when another group left to go to Mississippi?

A. No. I was with the first group.

Q. You were with the first group?

A. Yes.

Q. I show you, Mr. Mann, what purports to be the Alabama Journal of May 24th, which carries a headline "26 Riders Leave the City on Bus; More Due Here This Afternoon." In the right hand corner it indicates "Lunch Counter Integrated at Local Station." Do you recall reading that article?

Deputy Solicitor Riggs: Now, just a minute. If the Court please, we are going to object. He has already testified he couldn't say whether they used the facilities.

The Court: I will let him testify whether he recalls reading the article. I don't think all of it ought to be in.

The Witness: I probably read it, but I don't recall that particular article.

By Attorney Gray:

Q. It has, to your attention in your official capacity that they did integrate the lunch counter the day before these persons were arrested?

A. You asked if it was called to my attention?

Q. Yes. Has it?

[fol. 120] A. Right.

Q. It has?

A. Yes.

Q. All right. I think you have indicated you were there on this Wednesday when the first group left for the purpose of assisting them to Mississippi?

A. That's correct.

Q. Now, you were there the second day, on Wednesday the 25th, when these defendants were there. Were you there for the same purpose?

A. That's correct.

Q. And did not the same thing occur substantially on the 25th that occurred on the 24th?

A. I couldn't say what occurred on the 24th because I wasn't there.

Q. You were on the outside?

A. That's right. I mean, what you questioned me about prior to that.

Q. But you did see them come in?

A. That's true. I saw them enter.

Q. You saw them enter?

A. Right.

Q. And did you see any of these defendants do anything that in your opinion as a law enforcement officer you would call violating the law?

A. Are you speaking of these defendants?

Q. These defendants.

A. Well, as I stated to you, I re-state to you, we didn't arrest them.

Q. Yes, sir. I understand that. My question, sir, was whether or not in your opinion as a law enforcement officer observing these persons, did they violate any law?

A. You are asking me now in my opinion?

Q. Yes, sir.

A. I think what they did that morning was certainly calculated, it could have caused a disorder in the bus station.

Q. Now, what did they do that morning?

A. They seated themselves around the lunch counter in the white waiting room.

[fol. 121] Q. And what was wrong with that?

A. That isn't what you asked me. You asked me did I see anything that could have caused a problem.

Q. That's right. I am asking you now though what was wrong with them seating themselves at the white lunch counter in the white waiting room.

A. Well, since I didn't make the arrest I would rather the officer who arrested them would answer you that question.

Q. In your best judgment.

A. I assume that the arresting officer assumed that their conduct was calculated to breach the peace.

Q. I think you have indicated, but approximately how many persons from the Department of Public Safety were in the terminal at that time?

A. At that particular time?

Q. Yes, sir.

A. From the Department of Public Safety?

Q. Yes, sir.

A. I would say four or five.

Q. About four or five?

A. I am not sure about that.

Q. I understand. Do you have any idea approximately how many persons from the Sheriff's office were present in this terminal at that time?

A. I do not.

Q. Do you know approximately how many persons of the military were in the terminal at that time?

A. Oh, I do not. I would say a dozen or more.

Q. Now, will you tell us, sir, were there any troops stationed outside the bus terminal this morning?

A. There were.

Q. Approximately how many in your best judgment?

A. Well, in my best judgment I would say a hundred or more.

Q. And did you have any persons from your department outside?

A. We did.

Q. Approximately how many persons were outside, your men?

[fol. 122] A. Approximately thirty-five.

Q. Do you know whether or not there were any persons from the Montgomery City Police Department outside that morning?

A. Yes, I saw some of them.

Q. In your best judgment how many?

A. I wouldn't estimate. I saw some on motorcycles.

Q. Would you say as many as five or ten?

A. I wouldn't say.

Q. As many as two?

A. Yes, I would say that because I saw that many on motorcycles.

Q. As many as five?

A. I wouldn't say.

Q. Now, do you know who was directing your men outside the bus terminal?

A. Yes. Chief Smelley.

Q. And he was out there himself?

A. That's right.

Q. How long has he been a law enforcement officer of the State of Alabama?

A. About twenty-six years.

Q. Do you know who was in charge of the military outside?

A. No, I do not.

Q. Would you say, Mr. Mann, that there were approximately the same number of law enforcement officers outside the bus terminal when these defendants were arrested as were outside the bus terminal on the day before when the other Freedom Riders left town?

A. Approximately, yes.

Q. Will you tell us whether any persons who were not law enforcement officers, or in the military service, were arrested outside of that bus terminal that morning when these defendants were arrested inside?

A. If there was I didn't hear of them.

Q. So that if there were no arrests outside apparently no person outside had done anything to the extent that an arrest was necessary on the outside?

A. Probably not. They weren't arrested.

[fol. 123] Q. So then the crowd outside was under control?

A. I would certainly think so, yes.

Q. Are you familiar, Mr. Mann, with the location of the Trailways Bus Terminal in Montgomery?

A. Do you mean what street it is on?

Q. Exactly how it is situated. I would like for you to describe for the Record how you can enter it, how the buses usually enter, how the waiting rooms are there and where they are located.

A. I am not that familiar with it. I know there is a waiting room that I was in, and where the buses pull in and turn around. That is the only time I was ever at that bus station.

Q. Do you know whether there was at that time a waiting-room for colored persons in the bus station?

A. Yes.

Q. And a lunch counter there too?

A. I didn't see it.

Q. You didn't see it?

A. No.

Q. Do you know whether there is a place to purchase tickets in the colored waiting room?

A. Well, the only thing I can do is assume. I don't know.

Q. And there was a separate white waiting room?

A. There was a white waiting room that I was in, yes.

Q. And a lunch counter in there?

A. Yes.

Q. A ticket counter?

A. Yes.

Q. And rest room?

A. Yes.

Q. Will you tell us whether all of these defendants had seated themselves at the lunch counter at the time they were arrested?

A. I wouldn't know that.

Q. Do you recall talking to any of them?

A. I believe that Wyatt Walker made some remark to me [fol. 124] about service on the phone. I believe he was making a telephone call.

Q. And he never got to the lunch counter, did he, before he was arrested?

A. I don't believe so.

Q. Now, will you tell us, sir, whether these defendants were doing anything other than either sitting at the lunch counter or some place in the white waiting room at the time of their arrest?

A. Do you mean when you say doing—they were conversing with one another?

Q. I mean, was their conduct boisterous, or were they disorderly among themselves?

A. I didn't notice it if they were.

Q. If they had you would have seen it?

A. I think I would.

Q. I think you testified earlier, sir, that there were approximately one hundred military personnel outside the bus terminal. Can you tell us exactly where they were stationed with respect to the bus station?

A. Well, where you enter the bus station those military men were stationed across the street, I believe there were some up on top of the building, some at the intersections, at each intersection leading into the bus station.

Q. Do you know where your men were stationed with respect to the bus station?

A. They were around their patrol cars. Those men we had there were there for the purpose of an escort.

Q. Now, will you tell us, sir, whether at the intersection of the street was it blocked off for traffic so traffic couldn't come down it?

A. I believe so. I believe so. I am not sure.

Q. Now, approximately where were these other persons who were non-military persons, how far were they from the bus terminal?

A. Do you mean non-law enforcement people?

Q. Yes, sir.

A. They were around the intersections. I could see them standing there tip-toeing looking over the people.

Q. At the intersection of the street?

[fol. 125] A. That's right.

Q. And when you say at the intersection—

A. I think they also had it where pedestrians could walk up and down the street.

Q. But most of these persons were at the intersection?

A. A lot of them were.

Q. And when you say intersection you mean on the corner of Lee and Montgomery Streets?

A. I am not familiar with the streets there, Rev. Gray.

Q. How far were these people, say, from the corner?

A. I would say one intersection was farther from the bus station than the other intersection.

Q. In your best judgment, approximately how many yards or feet?

A. I believe one intersection was approximately twenty yards or probably, and the other one was sixty.

Q. And most of these people were at those intersections?

A. A lot of them were.

Q. Non-law enforcement officers?

A. I said a lot of them were.

Attorney Gray: Thank you very much.
The Court: I want to ask him a question.

By the Court:

Q. Why were all the law enforcement people there?
A. Well, I certainly think the reason why they were there was to prevent a re-occurrence of what had happened in this city.
Q. Had that unrest, racial unrest, existed from Saturday of the first occurrence to the time of this last occurrence when the eleven were arrested?
A. Your Honor, will you repeat that, please?
Q. Would you say they had a racial unrest in Montgomery?
A. Yes, sir, very much so.
Q. And had it existed from the Saturday when the first occurrence took place through to Thursday when the last one occurred?
A. Yes, sir, very much so.
[fol. 126] Q. And I noticed that paper that was introduced. Let me see that again.

Attorney Gray: I didn't introduce it, but I would like to introduce it.
The Court: The one that was there.
Attorney Gray: I would like to introduce it.

By the Court:

Q. Did you read this, "More Due Here This Afternoon"?
A. Yes, sir. Well, I was reading the papers at that time to find out what was happening.
Q. Is that the eleven that was expected?
A. I don't know when these eleven came in.
Q. Was that the day after?
A. That was the day before the arrests, yes, sir.

The Court: That is what I mean. All right.
Deputy Solicitor Smith: We have no objection to the introduction of that paper.
The Court: Do you all want to introduce the paper?

Attorney Gray: Let me see it. I don't know if I want to introduce it, or not. Now, that the State has no objection I don't know whether I will, or not. We would like to introduce it as Defendants' Exhibit 1.

The Court: All right.

Attorney Gray: It is the newspaper article on the front page of the Alabama Journal of May 24th, 1961.

Deputy Solicitor Riggs: We have no further questions.

The Court: I have one.

By the Court:

Q. Did you have any knowledge beforehand these eleven were coming in to Montgomery? Did the newspapers, or television, or radio carry that?

A. Yes, sir. We were being informed through the news media and other sources when these people might arrive.

(Front page of Alabama Journal dated May 24, 1961, marked "Defendants' Exhibit 1, 11-20-1961, WHL".)

[fol. 127] RALPH D. POARCH, having been duly sworn, was examined and testified as follows:

Direct examination.

By Deputy Solicitor Riggs:

Q. State your name, please, sir.

A. Ralph D. Poarch.

Q. And what is your occupation and place of residence?

A. I am an attorney from Anniston, Alabama.

Q. Do you have any part-time occupation other than being an attorney?

A. Well, I am Staff Judge Advocate, 31st Division of the Alabama National Guard.

Q. All right, sir. How long have you been Staff Judge Advocate?

A. Since 1953.

Q. Did you occupy that position in May of this year?

A. Yes, I did.

Q. Were you on duty with the National Guard in Montgomery County during May of this year?

A. Yes, I was.

Q. And what was your function at that time?

A. I was called to Montgomery as the legal advisor to General Graham, Major-General Henry D. Graham.

Q. And was the City of Montgomery under a state of martial law at that time?

A. It was, yes, when I arrived.

Q. Colonel, when did you arrive in Montgomery for your tour of duty with the National Guard?

A. I arrived in Montgomery on Monday, May the 23rd, I believe it was.

Q. And what was the situation when you arrived here?

A. The situation on that day was the day following the incident at the church in which the marshals were used and quite a crowd had gathered and there had been some difficulty outside of the church the night before.

Q. Well, now, had martial law been declared following that riot?

[fol. 128] A. It was declared around midnight of that night.

Q. Were the United States Marshals present in Montgomery County at that time?

A. It was my understanding they were, around seven hundred of them.

Q. Do you know how many there were?

A. Seven hundred to the best of my knowledge.

Q. All right, sir. Now, what was the general racial situation in the community at the time you came?

A. Well, it was extremely tense. The city was being patrolled by jeeps, armed convoys, and armed jeeps. There were some fourteen hundred National Guardsmen on duty armed and equipped. There were regular sentry posts placed in various segments of the town. The Guardsmen themselves were very apprehensive of further trouble at that particular time.

Q. All right, sir. After you came and prior to Thursday morning were there any incidents of racial unrest in Montgomery?

A. Yes, there were. There was an incident on the day I arrived, and on the evening I arrived, in which there was a rumor to the effect that several bus loads of—

Attorney Gray: Your Honor, we must object to rumors.

The Court: Yes. Don't tell what the rumor was.

The Witness: All right, sir. We received a call to re-inforce the Greyhound Bus Station on Monday evening. There were literally hundreds of people in cars circling a ring around the station, cars of from five to six men, that had no apparent purpose except to ring the station and to keep circling it. We re-inforced the guard, and at that time we went in, I went in with General Graham, and we did encounter some difficulty in clearing the situation up.

By Deputy Solicitor Riggs:

Q. Did the group of Freedom Riders come in at that time?

A. It did not.

Q. It did not come?

A. No.

Q. All right, sir. Were there any other incidents of racial unrest?

A. Yes, sir. There were some incidents on Wednesday [fol. 129] afternoon when these particular persons—I beg your pardon, to get my days straight—there were some crowds at various times at the various stations. We were called to the Greyhound Station, to the L & N Depot, to the Air Terminal at various times in which there was thought there would be tension and trouble.

Q. All right, sir. And during that time were there any reports over radio or television about the activities of Freedom Riders coming to and departing from Montgomery?

A. Yes. There were reports on the radio and through the newspapers, and we were in contact with the Highway Patrol authorities of Georgia who kept us posted.

Q. All right, sir. Now, were there any shooting incidents?

A. Yes, there were shooting incidents. A very unfortunate incident, in my judgment, in which we received a report that the Rev. Solomon Seay had been shot. And I called his son and expressed my regret about the shooting.

And that evening Sheriff Butler, General Graham and one other officer and I went out to the Rev. Seay's house and expressed our regrets and determination to find out who did it, who perpetrated this action, and they were arrested the next day.

Q. All right, sir. Now, did you on Thursday morning, May 25th, see these eleven defendants?

A. Yes, sir, I did.

Q. And where did you first see them?

A. I first saw them at the home of Rev. Abernathy.

Q. How did you happen to go to the home of Rev. Abernathy?

A. We had received a call at the Headquarters of the Army, Ft. Dixie Graves Armory, to the effect that they wished to board the bus at about eleven-thirty, and they wished an escort at around eleven o'clock, and I went out to see that the escort was set up and that it did in fact take them to the station.

Q. All right, sir. When you went to Abernathy's house what did you observe when you first got there?

A. I parked my car and stood within about a third or a fourth of a block from the house, and there was a press [fol. 130] conference going on on the steps of the Abernathy home when I arrived. There were camera men and newspaper photographers and perhaps radio reporters there.

Q. Were these defendants present at that press conference?

A. Yes.

Q. About how many, if you know, news men were present out there?

Attorney Gray: Your Honor, we object. It has nothing to do with this case.

The Court: Overrule your objection. This is all part of one transaction.

The Witness: I would estimate there were five or six people there including camera men.

By Deputy Solicitor Riggs:

Q. All right. Then did you go along with this National Guard unit to escort these eleven people to the bus station?

A. Yes. Their cars were placed in the center of the convoy and I came up in the rear vehicle.

Q. How many National Guard vehicles were there in the convoy?

A. I would estimate about six.

Q. And how many National Guard vehicles would have been in front of the vehicles which were occupied by these defendants?

A. Two or possibly three.

Q. And were all of the rest behind?

A. Yes.

Q. And where were you?

A. I was the last vehicle.

Q. Were the National Guardsmen in this convoy armed?

A. Yes, they were.

Q. What sort of vehicles were they, were they trucks?

A. Some were jeeps and some were trucks, as I recall, and the troops on the vehicles were armed, and had on helmets, steel helmets, and were in combat type uniforms.

Q. All right, sir. Did the convoy proceed direct from Abernathy's house to the Trailways Bus Station?

A. It did.

[fol. 131] Q. Where in relation to the station did the convoy go?

A. The Trailways Station is enclosed by a roof and we drove inside the station toward the rear of the waiting room. There is a parking area back there where the buses sometimes park. We drove in the left side of the front of the station and drove into the rear where we got out of our vehicles.

Q. All right, sir. And what was the purpose in driving inside of the station to discharge those people?

A. Well, there was a large crowd of people outside the station, and there were troops outside the station, and there would be a convoy stopped out in the street. The street, I believe, is that Lee Street?

Q. Yes.

A. Was blocked at each entrance by vehicles to prevent traffic from coming through. The street was pretty well occupied by people and vehicles at that time so we drove into the station proper.

Q. Colonel, can you estimate the number of people who were non-military or uniformed people who were milling around in the street out there at the station?

A. In my judgment there were some three hundred people.

Q. All right, sir. Could you observe the attitude of that crowd?

Attorney Gray: We object to that.

The Court: Overrule your objection.

The Witness: Well, the situation and the crowd in general I thought was very tense, and certainly they were hostile to the people that we were escorting.

By Deputy Solicitor Riggs:

Q. Well, now, did you consider that it was necessary for the maintenance of order that these eleven people be taken inside of the station rather than discharged at the front door?

Attorney Gray: We object, Your Honor, as leading.

The Court: Yes. It was leading. I sustain your objection.

By Deputy Solicitor Riggs:

Q. Colonel, after these eleven defendants got into the [fol. 132] station, what did they do?

A. They got out of their cars and walked to the side entrance to the station and walked in the main waiting room and began to buy tickets for bus transportation presumably to Jackson, Mississippi.

Q. All right. And then what did they do? Excuse me. Let me ask you this. Do you know whether or not all of them bought tickets?

A. I do not. I know they centered around the ticket counter and stood together in a group pretty well at that time. I left them at that particular point and went to observe the interior of the station to see what else was transpiring there.

Q. All right, sir. Were there other people other than military and law enforcement people inside the station?

A. Yes, sir, there were.

Q. All right. What did the defendants do after they went to the ticket counter?

A. They seemed to wait until they had purchased their tickets and then they moved from the vicinity of the ticket counter, which is located in the rear of that particular room, to the area of the lunch counter which is located in the front portion of the room.

Q. Now, you say they went over to the lunch counter?

A. Yes, sir.

Q. From the ticket counter?

A. Yes, sir.

Q. And what did they do at the lunch counter?

A. They moved over to the vicinity of the lunch counter and began to occupy the seats at the counter.

Q. Had there been any overt act on the part of anybody in the crowd either inside or outside of the station prior to the time they went to the counter which would indicate hostility on the part of the crowd?

A. Yes, there was.

Q. Describe that for us, please, sir.

A. As I was saying, when they were buying their tickets I walked up to the center of the room, the main waiting room, and there were thirty-five to fifty people inside of the room, some were travelers, some were newspaper [fol. 133] people, correspondents, others were military people and police. We did not have time to determine who was a bona fide passenger and who was not. There were, however, three white men at the counter that I observed, and they were taking coffee, which they had purchased and were pouring it on the tops of each seat there at the lunch counter. And, when I observed that I went up to them and asked them if they had any business in the station and if they had any tickets, they said no, and I said, "Well, you get out of here." And I ordered them out of the station and they left. And that was immediately before these persons took their seats at the counter. The action of ordering these people out was taken immediately before they sat down at the counter.

Q. All right, sir. Now, at the time these defendants went over to the lunch counter could members of the crowd outside see in the station, or do you know?

A. In my judgment they could. They were large plate glass windows and it was possible to see in from the outside.

Q. All right, sir. Now, after they went over and sat down how soon were they arrested?

A. Well, the first thing they did, a number of them took out their handkerchiefs and wiped the seats off where coffee had been poured, and when they sat down at the counter, the white waitress behind the counter immediately left and went to the opposite side of the room. And that, of course, in my judgment, increased the tension inside the room. The moment had come in my judgment when there was danger of a riot, and I thought at that particular moment their conduct in selecting that particular time and place to integrate a lunch counter could have easily provoked a riot.

Q. At the time the National Guard escort was requested to pick these people up at Abernathy's house was any announcement made they planned to use the lunch counter facilities at the bus station?

A. Not to my knowledge.

Q. Now, who gave the order to arrest these eleven defendants?

A. I did.

Q. And to whom did you give it?

[fol. 134] A. Sheriff Butler.

Q. And why did you feel it was necessary to arrest these men?

A. Because, as I have stated, the air was electric with excitement and tension, there were three hundred people outside the station who were hostile to these persons; there were an unknown number of people in the station that could have caused trouble or injury, not only to these persons but to innocent passers-by or people who had no connection with either side of this particular trouble, as well as to the National Guardsmen themselves, and I thought in my interpretation of the particular statute, the breach of peace statute, Title 14, Section 119, that at that time their con-

duct was sufficient to provoke a breach of the peace or to cause a riot.

Q. All right, sir. Now, have you had previous military training in the handling of hostile crowds and riots?

A. I have had some training in it, yes, sir.

Q. And what is the accepted mode of dispersing a crowd?

A. Well, the military text books set up various squad formations in which troops with fixed bayonets march into a crowd to force them back. Or it involves a use of force. But the principle involved is to disperse the crowd or to remove the cause of the anger of the crowd.

Q. Or to remove the cause of the anger?

A. Yes.

Q. Is that what is referred to as the focal point of the riot?

A. Yes, I would say that is correct.

Q. And your testimony is you can disperse a crowd by removing the focal point of the riot?

A. Either disperse the crowd or remove the focal point of the crowd, of the riot, yes.

Q. Now, Colonel, in your judgment would it have been practical to disperse this crowd with fixed bayonets?

A. No, I do not think so for several reasons. The first reason is that we were not set up at that particular moment, or in certain formations. That would have taken time to organize it. We were there to form a convoy to take the people to Mississippi. The convoy vehicles were in the [fol. 135] middle of the street. It would not have been possible to use any particular formation to get these people in and out of these vehicles, or from between these vehicles to move them back. We had a cordon of troops in front of the station, and we did not consider the fact that the crowd should have been dispersed.

Q. All right, sir. Was it your intention in going to the bus station to allow or not to allow these people to use the lunch counter facilities provided they could do so with relative safety to themselves and to the crowd outside?

A. I had no particular knowledge as to whether or not these people would use the lunch counter, or not, and I had no personal plans made with regard to the dispersing

of any crowds or whether or not they would use the lunch counter.

Q. Had mixed groups on prior occasions during that week been permitted to use the lunch counter at the bus station?

A. It is my understanding that they had. I was not present at that time.

Q. Did all of these events and these arrests and the press conference and everything, occur in Montgomery County?

A. Yes, it did.

Deputy Solicitor Riggs: All right. That's all.

Cross examination.

By Attorney Gray:

Q. Colonel, when did you come to Montgomery?

A. On Monday of that particular week, I believe it is the 22nd or 23rd of May, 1961.

Q. Were you aware of any arrangement that General Graham had made with Rev. Walker asking Rev. Walker at any time anyone from Rev. Abernathy's house wanted to go any place to let his office know?

A. Yes, I was aware of that.

Q. And was it not pursuant to General Graham's instructions that on this Thursday a call was made to General Graham's office letting them know that these persons were going to leave and go to the bus terminal?

Deputy Solicitor Smith: We object to that, if the Court [fol. 136] please. The witness couldn't possibly know that.

The Court: Yes. Well, if you will re-phrase it. I think what you are after is all right.

By Attorney Gray:

Q. You did receive a call, did you not, informing you that there was a group of persons who would be leaving Rev. Abernathy's house going to the bus terminal; is that right?

A. A call came to Headquarters. I did not take it.

Q. Yes, to Headquarters.

A. Yes.

Q. And wasn't it pursuant to that call you went out to Rev. Abernathy's house?

A. Yes.

Q. Did you at that time tell them that it would be for their best interest not to use the facilities of the white bus station?

A. I did not have any conversation with them at the Abernathy house as I recall. I did not tell them that anyway. In any event, I did not make any such statement.

Q. And I believe you said their cars were in the middle of this patrol?

A. The best of my recollection they were in the center. They were not the lead vehicles nor the last vehicles.

Q. And did these cars follow the lead vehicle?

A. Yes, they did.

Q. Did they request the lead vehicle to go into the bus terminal the way it went?

A. I do not know. I don't think so.

Q. Will you tell us, sir, approximately where the lead vehicle stopped in the bus terminal?

A. The best of my recollection it went most of the way around the rear. I do not recall exactly where.

Q. And these defendants' vehicles were stopped at the back of the bus terminal?

A. Somewhere in that vicinity.

Q. Near the rear entrance?

[fol. 137] A. The best of my judgment it was somewhere in the vicinity of the rear. I don't know exactly where they stopped.

Q. Now, let's go back to the day before. How many groups of Freedom Riders left Montgomery on that Wednesday?

A. I was not in Montgomery. I had been sent to the Mississippi line, but I understood two groups left.

Q. Do you know about what time the first group left?

A. This is all hearsay. I left Montgomery about three-thirty or four o'clock that morning, but I understood they left around seven-thirty that morning.

Q. And I think you also testified from information that you obtained in your official capacity that these persons

did use the facilities of the white terminal at the Greyhound Bus Station; is that correct?

A. It is my understanding that they did, yes.

Q. And that they did that on these two previous occasions?

A. I don't know whether on one or two. I do not know.

Q. And that none of them were arrested at that time?

A. To my knowledge they were not.

Q. Did you have a reason to believe that this group would not do as the other groups previously on this occasion?

A. No. I had no knowledge of what they would do. They were under someone else's leadership and I had no consultation with them. I did not know what they would do.

Q. Did you have any reason to believe that the reaction of any person in the terminal or outside of the terminal would be any different than the reaction to the same type of activity which had occurred the previous day?

A. Well, first of all, I was not present the previous day. I do not know what crowd was there, if any, I do not know what reaction there was obtained at that particular time, so I cannot answer the question.

Q. Let me ask you, sir, did you have occasion to read the defendants' exhibit 1 which has been introduced in evidence, the Alabama Journal of Wednesday, the 24th of May?

A. I don't know whether I have read this.

[fol. 138] Q. You don't know whether you had read it?

A. No, I do not.

Q. But I think you did testify it had something to do with tension, the fact an inter-racial group had used the facilities of the white waiting room of the bus terminal on the day before?

A. I heard that on the way back from Mississippi, yes.

Q. So then you knew that before these persons were arrested the next day?

A. Yes, I knew that they had used the facilities.

Q. Did you have any information there had been any violent reaction to their using these facilities the day before?

A. I did not have any information about their specific use of those facilities. I did have some information about

the violent reaction to the arrival of these persons on the afternoon immediately prior to their departure.

Q. Do you know, sir, whether or not when some of these defendants arrived in Montgomery the day before at the Greyhound Bus Terminal whether any effort was made to use the facilities of the Greyhound Bus Terminal?

A. I will be glad to tell you what I do know about it. It is not direct information.

Q. Do you know whether or not they attempted to use the bus terminal?

A. My information was when these persons arrived they got off the bus and got into vehicles in the rear of the station where they were stoned by a crowd estimated to be some two thousand people.

Q. Then your information was to the effect that they did not try to use the facilities?

A. That is correct. They got out of the buses and went directly to the Abernathy home.

Q. Now, exactly what happened when these defendants arrived at the Trailways Bus Terminal?

A. I am not sure I understand your question.

Q. When they got out of their cars what did they do?

A. They went around to the side door and went into the [fol. 139] station and started buying tickets.

Q. Did anyone tell them they could not buy tickets in that waiting room?

A. Not to my knowledge.

Q. Now, I think you said before they were seated you saw three white men pouring coffee on the stools at the lunch counter?

A. That's correct.

Q. And I believe previously you used a term to describe those persons as—will you describe them as you did, the way you did in the other Court trial?

A. Yes, I will be glad to. In my judgment they were three white toughs who were trying to create trouble in the station.

Q. And did you have those persons arrested?

A. I personally ejected them from the station. I did not arrest them.

Q. Will you tell us why you didn't? Just a moment. Tell us whether or not you considered under the circumstances at that place and at that time pouring coffee on the seats amounted to conduct calculated to create a breach of the peace? In your opinion, was such conduct calculated to create a breach of the peace?

A. I think that it could be reasoned that was conduct calculated to provoke a breach of the peace.

Q. And why didn't you arrest them?

A. Because my primary mission was to preserve the safety of all the persons in the station, including these defendants. We were trying to prevent a riot. We thought that the best way to prevent trouble was to eject those persons. I went to them, as I testified, and asked them if they had tickets and they said they did not. And then I asked them to get out of there because they had no business inside of that station at that time. At that particular time no one had attempted to sit down at the lunch counter.

Q. Now, did you ask any of these defendants to leave prior to the time they were seated at the lunch counter?

A. I did not.

Q. Now, after some of them were seated at the lunch [fol. 140] counter and prior to the time you had them arrested, did you ask them to leave?

A. Well, I think I explained that at the previous trial. I did not ask them to leave for the simple reason that they were passengers in interstate commerce. I had no authority to ask them to leave.

Q. Since they were passengers in interstate commerce you had no authority to ask them to leave?

A. Leave the station.

Q. But you did have authority to have them arrested?

A. If they in my judgment created a conduct which was violation of the statutes of the State of Alabama in that particular time and place, I did, yes.

Q. Will you for the Court distinguish the difference between these two sets of acts of conduct which, in your opinion, would necessitate arresting one group and letting another group go?

A. Well, as I explained to you, the primary function of the National Guard was to maintain order in the City of

Montgomery to protect the lives and property of people involved. We went there for the mission of escorting these people to Mississippi, not for the purpose of putting them in jail. We didn't go in the station for the purpose of putting anybody in jail. These three persons were sitting there by their actions creating to the tenseness of the moment and it could have caused possible danger or trouble to themselves and to all other persons involved. Because our primary function was to see that this convoy was set up and that it took place, and to preserve order in the station. I thought, and I still think, that the situation was best served at that time by ejecting those persons from the station. If there had been no function of the Guardsmen there at that particular time I think they should have been arrested.

Q. In other words, in your opinion it was better to eject the person who created an atmosphere of tension rather than ask the other group who were traveling, some of whom were travelers in interstate commerce, to leave, or in any way to indicate to them that their conduct may tend to create a breach of the peace?

A. Well, as I have said, at the time these people were [fol. 141] creating these actions of pouring coffee on the seats, these passengers were back at the area of the ticket counter, nothing had taken place. I had no way of knowing they were going to integrate the lunch counter at that particular time. In my judgment, if they had made no move in that regard there would have been no great creation of tension, no greater increase of tension. The tension was already there. The three white toughs in my judgment added to the tension.

Q. As interstate passengers did not these defendants have a right to use whatever facilities were available in the terminal?

A. I think that has been well established if there had been no crowd there, if there had been no tension there, I think that these people could have sat down and eaten at this counter without any incident whatever, without any arrest being made. I think that comes under the principle, the old principle of free speech, but you can't yell "Fire" in a crowded theatre.

Q. Did these people say anything, were they talking boisterous, these defendants?

A. They were talking among themselves. They did not talk loud in my judgment.

Q. So their conduct was not equivalent to yelling "Fire" in a crowded theatre, was it, sir?

A. Well, of course, that was a symbol I was using. They had a right to eat at the lunch counter under the I.C.C. ruling, but I don't think it is the best of judgment or caution to use that right at a moment when it might jeopardize their lives or their health.

Q. Now, let me ask you this, sir. Between the time you went to Mississippi ahead of the first group of Freedom Riders had you learned of the fact that upon the arrival of this group of persons in Mississippi that those persons had been arrested?

A. I am not sure I understand your question.

The Court: Did you mean Mississippi or Alabama?

Attorney Gray: Yes, Mississippi.

The Witness: When I arrived at the Mississippi line the passengers had not arrived. I got there about five-thirty [fol. 142] in the morning. I met the Highway Patrol of Mississippi there. There were no troops there or anyone else at the time I first got there.

By Attorney Gray:

Q. What I am saying is before the morning of the 25th of May did you know, or had you heard, that these persons who had left Montgomery successfully after eating at the lunch counter had been arrested when they arrived at Jackson, Mississippi?

A. I believe that was in the news, yes.

Q. And you knew that that morning?

A. Yes.

Q. And did their arrest in any way influence your deciding to make this arrest on that occasion?

A. No, it did not.

Q. The fact that the Mississippi people handled it by arrest didn't in any way influence your deciding to arrest this group that morning?

A. We would have been very happy to transfer the problem to Mississippi without arrest.

Q. Well, will you tell us, sir, why did the military change its position? Heretofore they provided escorts to take them to Mississippi. On this occasion they arrested them. Why the change of procedure?

A. All right. I will answer your question as best I can. It was my understanding that the Attorney General of the State of Alabama, and the Adjutant General of the State of Alabama, had made an agreement to the effect that no arrests would be made under an injunction that had been issued in this Court if the persons involved would leave the State of Alabama. The convoys were set up and, as I say, I left at approximately three-thirty in the morning going to Mississippi. I did not go with either convoy. I checked in at Selma, I checked in at Demopolosis, and I checked in at Union Town, where trouble was anticipated. I set up and checked with all of these points, the troops were unloaded, and acted as liaison officers between Alabama and Mississippi. The first convoy came through approximately nine-thirty or ten o'clock. The second convoy crossed the Mississippi line around one o'clock or one-thirty. We came back to Montgomery, en route to Montgomery, with the [fol. 143] understanding that the City of Montgomery had passed its crisis, that the problem was largely over. And when we were west of Selma, Alabama, we heard a radio report that a new group had arrived in Montgomery from Atlanta. And when we got back to the Armory we checked and found that this group had been met by hostile crowds of some two thousand persons who had stoned the car in which they were riding, and that it had been necessary for the officer in charge of the Security at the station to call for reinforcements of the National Guards.

1:10 o'clock P. M. Adjourned until 2:30 o'clock P. M.

2:30 o'clock P. M.

Parties present as before noted.

RALPH D. POARCH, resumed.

By Attorney Gray:

Q. I believe, Colonel, that you were testifying to the effect as to why you changed the methods from one day to the other day. As I recall your testimony, you mentioned something with reference to it was your understanding there was some type of agreement where when you got the first Freedom Riders to Mississippi there would be no further demonstration; is that correct?

A. I believe my testimony was to the effect that there was an understanding to which I was not a party between the Attorney General and the Adjutant General and the representatives of the Freedom Riders there would be no arrests made under the injunction issued out of this Court if, in effect, they did depart the State of Alabama. And they did, in effect, depart. And, as I said, I was with the early group that left in advance of the convoy and I knew nothing of the happenings in Montgomery during the previous day until I got back.

Q. And then you were testifying on your way back you heard about an additional group of Freedom Riders coming in?

A. That is correct.

[fol. 144] Q. And then what happened?

A. Well, I got back to headquarters and there was much concern about the fact that this new group had been met by some two thousand people it was estimated; that Lieutenant Colonel Charles Snell, who was in charge of the Security at the Greyhound Bus Station, had to call for reinforcements, and that the crowd became very unruly and almost got out of hand; in fact, rocks and stones were thrown at the car in which the persons were taken from the Greyhound Station, and that there was a great deal of concern about the new animosity which had arisen since we had come back from Mississippi.

Q. And was it because of what appeared to have been a violation of this understanding between all of the parties that this next group were arrested?

A. Oh, no, oh, no. I did not say that. I was saying that the tension was heightened and, in fact, increased, the

crowds increased, the explosive atmosphere or attitude of the city seemed to be heightened by the arrival of a new group when everybody thought the tension had passed. It broke out anew.

Q. I believe my initial question was why did the military change its original method of handling those cases. Previously they had escorted two groups to the Mississippi boundary, and now they changed. Why did they change their method? This time they handled it by arresting the Freedom Riders.

A. Well, I don't know. I don't agree with you that there was a change in the method. The convoy was set up as before, it was the intention of the National Guard to escort these people to Mississippi. The officers were assigned, the troops were assigned, the Highway Patrol cars were there, and everybody was ready to go to Mississippi, and as far as we knew they were going to Mississippi. There was no change in our method.

Q. So there was no change in your plan?

A. No.

Q. Do you know why these defendants were arrested and earlier Freedom Riders were not arrested?

A. As I told you, I was not present when the earlier per- [fol. 145] sons were in Montgomery. I didn't know anything personally as to what happened when they were in the station.

Q. In the Staff meetings was there any discussion with reference to the situation?

A. I don't believe there was a staff meeting between the time we returned from Mississippi and when we departed the next morning. There may have been, but I don't recall it specifically at this time.

Q. You know Mr. Mann, don't you?

A. Yes, Floyd Mann.

Q. If at the time these persons were arrested the situation had been under control outside the bus terminal would you have ordered the arrests?

A. Let me say this, if I understand your question. If the circumstances had been different, if there had been no crowd there, if there had been no excitement, if there had been no

apparent danger or impending danger of a riot, I certainly would not have ordered their arrest.

Q. If you had had knowledge that the outside crowd was completely under control would you consider it necessary to make this arrest?

A. Well, I can't answer that question because I did not have such knowledge. If the crowd had not been there I would not have thought it would be necessary to make the arrests. I can answer it that way. And if we had excluded all persons within the station who were in danger of precipitating a riot. A riot to me means there must be a large number of people to participate in it.

Q. What I am saying, sir, if you did have such knowledge would you have ordered the arrests?

A. If I had such knowledge there was no pending riot?

Q. If you had had knowledge that the outside crowd was completely under control would you have ordered the arrests?

A. Well, that is a problematical question. Of course, I had no such knowledge in the first place.

Q. If you had had would you have ordered the arrests?

A. If I had thought there was no danger of a riot I would not have ordered the arrest.

[fol. 146] Q. Are you saying in response to my question that if you had that knowledge that the outside crowd was completely under control, then you would not have ordered the arrests?

A. You are asking me about a situation of which I do not have such knowledge, but if the crowd had been absent, or it had not been hostile, or if the tension had not existed, I would not have arrested them.

Q. Sir, if you will just give me a yes or no answer—

The Court: Well, let me ask him in a different way the same question.

By the Court:

Q. If somebody in authority which you could put confidence in had told you that there wasn't any condition would that have made any difference in your decision?

A. Yes, sir. It would have made some difference.

By Attorney Gray:

Q. You would not have made the arrests?

A. Probably not.

Q. Did you seek such information before you ordered the arrests?

A. Well, the Commanding General of all forces was within the station, there was a matter of forty-five seconds to a minute from the time that I ejected these three white toughs, as I have discussed them, until such time as they sat down at the counter. In my judgment there was no such time to seek such information.

Q. Do you know who was in charge of the military force outside of the terminal?

A. No, I do not, not specifically, no. I did not come down with them, and they were other assigned troops, and there was some fourteen hundred troops in Montgomery.

Q. But you made no effort to ascertain from any person who was on the outside of the station to determine their opinion as to what the situation was outside?

A. I did not leave the station.

Q. Now, did you, sir, make any efforts or order any person who may have been outside who were creating a dis- [fol. 147] turbance to cease or to leave the scene?

A. I did not. I did not go outside of the station.

Q. Do you know whether anyone in your presence did such?

A. I do not know. There was a lot going on in the station at that time. I mean, I don't know what each one of them did.

Q. Had any such knowledge come to your attention since that time that it happened?

A. I have no information to that effect.

Q. Do you remember whether or not it was sunny that day or whether it was cloudy?

A. I do not specifically recall. I know it was not raining. It could have been overcast or could have been sunny, either one. I don't specifically recall.

Q. Do you recall the visibility, about whether it was pretty cloudy, or was there an overcast?

The Court: He said he doesn't remember.

Attorney Gray: Thank you, sir. That is all.

Redirect examination.

By Deputy Solicitor Riggs:

Q. Colonel, were these three white toughs the focal point of this racial disturbance in the bus station?

A. Yes, they could have been a focal point. As I say, they were directly contributing to the tension inside the station and I started to remove them, and did remove them.

Q. Well, was it necessary for their safety to take them into custody?

A. No, I don't think so. I think by dispersing them—they were not the object of the empathy of the crowd. Let us put it that way.

Q. All right. Would it have been safe in your judgment to expel these eleven defendants from the bus station?

A. I would not have wanted to see them put out in the street without protection, no. In my judgment it would not have been safe.

Q. Do you know who among the eleven defendants, if any, did not actually take seats at the lunch counter?

A. I cannot identify them as to individual names. I have [fol. 148] no personal knowledge as to which ones did not sit at the counter.

Q. Do you know how many of them took seats at the lunch counter?

A. It would only be a guess. I would say ten or eleven.

Q. Now, without any danger of violence there in the bus station would you have arrested any of these eleven defendants simply because they were seeking service as a mixed group at the lunch counter?

Attorney Pollak: I object to the leading question, if Your Honor please.

The Court: Would you or would you not, and I will let him answer.

By Deputy Solicitor Riggs:

Q. In the absence of any danger of violence there at the bus station on that Thursday morning would you, or would you not, have arrested these eleven defendants solely be-

cause they in a racially mixed group sought service at the lunch counter?

A. I would not, and I did not subsequent to that.

Deputy Solicitor Riggs: We have no further questions.

Deputy Solicitor Smith: Just a moment.

By Deputy Solicitor Riggs:

Q. Colonel Poarch, were you present in the United States District Court for the Middle District of Alabama when the case of John R. Lewis and others against Southeastern Greyhound Lines and others was tried?

A. Yes, I was.

Q. Were you present in the Court Room during the testimony or were you kept in the witness room?

A. I was excluded. I was in the witness room.

Q. Then you were not present when the defendant, John David Maguire, testified at that hearing?

A. I was not.

Deputy Solicitor Riggs: We have no further questions.

Recross examination.

By Attorney Gray:

Q. Sir, are you telling the Court the only reason these defendants were arrested was for their own protection, not [fol. 149] for the enforcement of the law, but for their own protection?

A. That is not the only reason they were arrested. They were arrested because of the danger of provoking a riot causing injury to themselves and to all other persons involved including the National Guardsmen.

Q. Is there any other reason why they were arrested?

A. Well, that, in effect, sums it up because in my judgment their conduct at that particular time and place was calculated to provoke a riot and a breach of the peace.

Attorney Gray: That's all.

RAY JENKINS, having been duly sworn, was examined and testified as follows:

Direct examination.

By Deputy Solicitor Riggs:

Q. State your name, please, sir.
A. Ray Jenkins.
Q. And what is your employment?
A. Alabama Journal Managing Editor.
Q. And were you connected with the Alabama Journal on May 25th, 1961?
A. That is right. I was City Editor then.
Q. What is the Alabama Journal?
A. Afternoon newspaper here in Montgomery.
Q. Is it circulated here in Montgomery?
A. Right.
Q. Tell us, Mr. Jenkins, what is the Montgomery Advertiser?
A. It is a morning paper here in Montgomery.
Q. Is it a daily paper?
A. It is, right. Both daily papers.
Q. All right, sir. Were you familiar with the arrests of the eleven defendants in this case on May 25th, 1961?
A. Not personally familiar, no. I, of course, was aware of it.
Q. All right. Now, did you a short time prior to that arrest receive any telephone calls concerning this group? [fol. 150] A. I received a call during the morning saying that a press conference would be held by the group, I believe at the home of Rev. Abernathy, which was in the seventeen or eighteen hundred block of Hall Street, as I recall it.
Q. And who made that telephone call?
A. I am not positive on this point. I was trying to refresh my recollection this morning. I believe that it was Bernard Lee. I might be wrong on that.
Q. Is he one of the defendants in this case?
A. Yes, he is.

Q. All right. And what did the person who called you tell you would be said at this press conference, or what information would be given out?

A. They were going to tell why they made the Freedom Ride, what their plans were, and so forth.

Q. Well, you say what their plans were. Was that all they said, or did they elaborate on that any?

A. Well, I don't recall specifically. I just assumed they were going to tell us where they were going next.

Q. All right, sir. Do you recall what time in the morning it was you received this call?

A. I would guess it was around eight o'clock. Might have been a little earlier.

Q. It was early morning?

A. Early morning, yes.

Q. Do you know whether or not other news media were called about this press conference?

A. They all knew about it. I assume they were called. Several others did know about it.

Q. And it was as early as eight o'clock in the morning you were called?

A. It may have been later than that. It was early morning. I don't recall the exact time.

Deputy Solicitor Riggs: That's all.

[fol. 151] Cross examination.

By Attorney Gray:

Q. Mr. Jenkins, were you at the bus terminal, the Greyhound Bus Terminal, when the first Freedom Riders left Montgomery on Wednesday—Trailways, I am sorry—on Wednesday the 24th?

A. No, I wasn't there. The only time I was at either bus station, I was at the Greyhound when this particular group arrived. That is the only time that I was at the bus station during this period.

Q. Do you receive in your official capacity—you were City Editor, I believe you said?

A. At that time, yes.

Q. At that time for the Alabama Journal?

A. Yes.

Q. Any information with reference to the original Freedom Riders leaving Montgomery?

Deputy Solicitor Riggs: Now, we object to that, if the Court please. What information a newspaper man received would be hearsay.

The Court: I will let it go in.

The Witness: I don't recall. Let me think for a moment. I believe it was, as a matter of fact, but I am not positive, they left about seven o'clock in the morning. Is that right?

By Attorney Gray:

Q. Yes.

A. Then I think I did receive some. I am not positive, but I believe I did.

Q. Do you remember whether or not you received any such information as to the possible number of persons who were present at the terminal?

A. I did after my reporters got back in and told me how many they had there. I am not sure I understand the question.

Q. I was asking whether you received any information in your official capacity as City Editor? Let's take the first group of Freedom Riders that arrived, did you receive any information dealing with how many persons, approximately how many persons were around the bus terminal?

Deputy Solicitor Riggs: If the Court please, we renew [fol. 152] our objection on the ground his answer would be hearsay.

The Court: If he would divulge from whom he had his information I will let him testify.

The Witness: I believe I have got this straight now.

By Deputy Solicitor Riggs:

Q. Just a minute, Mr. Jenkins. Will you tell us from whom you got your information?

A. Yes. That is about what I was about to start with. If I am not mistaken, before I left home that morning I got a call from Rex Thomas, who is with the Associated

Press, saying these riders would leave at seven o'clock. And I went directly to the bus station, the Trailways Bus Station, and so I had no idea, of course, who might be there. I saw who was there when I got there. There were quite a number of National Guardsmen on duty there.

By Attorney Gray:

Q. So you were at the Trailways Bus Station when the first Freedom Riders left?

A. No, not when they left. I only rode by and saw the conditions and came on to the office.

Q. About what time was that?

A. About seven o'clock, perhaps a little before.

Q. And this was on Wednesday, the 24th of May?

A. I assume that is the day. It was the day the first group left.

Q. And at that time did you see a large group of persons?

A. No one at all except National Guardsmen. That was all I saw there that day.

Q. That was before the Freedom Riders arrived?

A. Before this group arrived, this group on trial now arrived. They arrived the next day as I recall, or maybe later that same day. I believe it was later that same day.

Q. Did you have occasion to go back to the bus terminal?

A. I was at the Greyhound Terminal when this group arrived.

Q. And were you at the Trailways Terminal when they left?

A. No.

[fol. 153] Q. Did you receive any reports as to the number of persons who were present at the time this group left?

A. At the time this one left, I was there and observed it then.

Q. When they were going to leave—

A. Oh, I am sorry. I was there when they arrived. I am sorry. I had received reports from my reporters of all this.

Q. Do you also receive the United Press International reports?

A. Yes.

Q. Do you know whether or not you received in your official capacity any such report of that incident?

A. It's possible. I am almost positive I did receive it, yes. I am certain I did.

Q. You are certain you did?

A. Yes.

Q. I would like for you to look at this report which is dated May 25th, the latter part of it, and see whether you can refresh your recollection as to approximately the number of persons who were present at the time they left?

Deputy Solicitor Riggs: Now, we object, if the Court please. It is still hearsay.

The Court: Sustain your objection.

The Witness: I have no way of knowing, of course, how many were there, only what my reporters told me.

Deputy Solicitor Riggs: Wait a minute, Mr. Jenkins. The Court has sustained my objection.

The Court: That is hearsay testimony. If any of the defendants here told you I would let it go in.

By Attorney Gray:

Q. And you were not there?

A. No, not there.

Attorney Gray: That is all.

Redirect examination.

By Deputy Solicitor Riggs:

Q. Mr. Jenkins, I believe you testified you were present [fol. 154] at the Greyhound Bus Station on the 24th of May when this group arrived?

A. That's right, when they arrived.

Q. How did you get information that this group was coming in?

A. In all probability, through press reports—I mean, through the wire service reports, but I am not certain about that. We went out to Tuskeegee to meet them and came back in with them.

Q. Do you know where the wire service reports came from?

A. Probably Atlanta. That is just another guess.

Q. In the normal course of events during that period did you get press releases from Atlanta telling you when these groups of Freedom Riders were coming into Montgomery?

A. Yes. Quite often we did, yes.

Q. Do you know whether or not this group of eleven defendants held a press conference in Atlanta before departing from Atlanta for Montgomery?

A. I don't know that they did. I don't recall.

Q. All right, sir. When this group arrived in Montgomery, these eleven defendants, on Wednesday, May 24th, was there any violent demonstration toward them by anybody?

A. No demonstrations, no.

Q. Were any bricks or any other objects thrown at any of them or at their car?

A. No.

Q. Was there a crowd outside of the bus station?

A. A pretty good size crowd, yes. I would say one hundred and fifty to two hundred people.

Deputy Solicitor Riggs: We have no further questions.

Roland Sevigny, having been duly sworn, was examined and testified as follows:

Direct examination.

By Deputy Solicitor Riggs:

Q. State your name, please, sir.

A. Roland Sevigny.

[fol. 155] Q. And did you have some official capacity in connection with the state of martial law which existed in Montgomery back in May of this year?

A. Yes, sir, I did.

Q. What was your connection?

A. I was liaison officer with the Sheriff's office.

Q. Are you a member of the National Guard?

A. Yes, I am Captain with the 31st Division.

Q. And you say you were liaison officer with the Sheriff's office?

A. Yes, sir, I was.

Q. And what were your duties as such officer?

A. Primarily I was representing the military—the Military Department in the Sheriff's office, and to assist Sheriff Butler in any way that I could.

Q. All right, sir. Were you present in the Trailways Bus Station in Montgomery on the morning of Thursday, May 25th, when these eleven defendants were arrested?

A. Yes, sir, I was.

Q. Did you see the defendants, or some of them, go over to the lunch counter in the bus station in a racially mixed group and attempt to seek service there?

A. Yes, sir, I did.

Q. Do you know which ones of the defendants, if they all didn't go, went to the lunch counter?

A. No, sir, I don't. I could probably recognize three or four and that is all.

Q. All right, sir. To refresh your recollection I will show you a photograph—

Attorney Gray: Just a moment.

By Deputy Solicitor Riggs:

Q. And I will ask you if that is a photograph taken there at the scene when these eleven defendants were being arrested?

Attorney Gray: We are going to object to that, Your Honor.

[fol. 156] The Witness: Yes, sir, it is.

The Court: On what ground?

Attorney Gray: We are objecting on the ground—that is all right—let him answer.

By Deputy Solicitor Riggs:

Q. What is this a picture of?

A. It is a picture of the scene in the bus station at the time Sheriff Butler made the arrest.

Attorney Gray: As a matter of fact, we have no objection to them introducing it.

The Court: All right.

By Deputy Solicitor Riggs:

Q. Does it accurately portray the scene?

A. Yes, sir, it does.

Q. It purports to depict?

A. Yes, sir.

Q. And does this show some of the defendants seated at the bus station lunch counter?

A. Yes, sir, it does.

Q. Would you count them and tell us how many it shows?

A. One, two, three, four, five, six, seven, eight.

Q. All right, sir. Do you see another defendant in the picture anywhere?

A. I believe this is one over here on the side. (Indicating)

Q. All right, sir.

Attorney Gray: Your Honor, we are going to object to any further interpreting of this picture. The picture speaks for itself.

The Court: It does, but I will let him look at the picture, and if you admit it speaks for itself, if he recognizes anybody on there I will let him testify.

By Deputy Solicitor Riggs:

Q. Now, do you know of any other defendant who was not in the picture but was seated at the lunch counter?

A. I believe there was one more on this far side. (Indicating)

[fol. 157] Q. And was he a white man or a Negro man?

A. I believe he was a Negro, but I am not sure.

Q. All right, sir. How many—when—

A. When I say I am not sure, there was another one sitting on this side right along in the corner. The reason I say I am not sure, I am not sure exactly how many of them were sitting there. (Indicating)

Q. How many white men do you see sitting there at the lunch counter?

A. There are at least three here and I believe there is another one not far away.

Q. All right, sir. Then there are four in that picture; is that correct?

A. Yes, sir.

OFFER IN EVIDENCE

Deputy Solicitor Riggs: We offer the picture in evidence, Judge.

The Court: All right. No objection.

(State's Exhibit 1, 11-20-1961, WHL")

By Deputy Solicitor Riggs:

Q. Captain, was the entire group of eleven people who were arrested there that morning taken in custody by the Sheriff?

A. Yes, sir, they were.

Q. And where were they taken?

A. Directly to the County Jail.

Q. Were they taken in a body?

A. Yes. In one vehicle.

Q. Did you go to the jail?

A. Yes, I did.

Q. And how many of the defendants were there at that time?

A. Eleven, sir.

Q. And were these persons who were arrested and taken to the County Jail by the Sheriff the same persons who were served there at the lunch counter?

A. Yes, sir.

Deputy Solicitor Riggs: We have no further questions.

[fol. 158] Cross examination.

By Attorney Gray:

Q. Will you tell me, sir, whether you were at the Trailways Bus Station on the day before when the other Freedom Riders left?

A. I was not in the station at the time. I was about a block away.

Q. Where were you?

A. In an automobile with Sheriff Butler.

Q. Did you have an occasion at all to come to the terminal that morning?

A. No, I did not.

Q. Were you there when the second group of Freedom Riders left the same day after the first group left?

A. Would you repeat that question?

Q. Do you remember how many Freedom Riders left the first day, on a Wednesday?

A. No, I don't, not accurately. It seems like there were two, but I am not sure.

Q. I think one left around seven and one around eleven. Do you know whether you were in that area on both of these occasions?

A. Yes, I was.

Q. Do you remember being at the station on either of those occasions?

A. Yes, I was.

Q. On which occasion?

A. I was there at the time the arrests were made, and this was, I believe, the same morning, I was also there when that first group departed.

Q. When the first group left the morning before?

A. Yes.

Q. Now, will you tell us were you inside the bus terminal or outside the bus terminal?

A. No, I was outside.

Q. Where outside were you?

A. We were approximately one block south.

Q. So on each of the occasions when the Freedom Riders left the day before you were outside the terminal?

[fol. 159] A. This is true.

Q. And the only time you were inside the terminal was when these persons were arrested?

A. This is true.

Q. Is it not a fact it was pre-arranged that you would come into the terminal for the purpose of arresting these persons, wasn't it?

A. No.

Q. Do you know why you weren't assigned inside the terminal on these other occasions?

A. No, I do not.

Q. Do you know why you went to the terminal on this occasion?

A. Because I was told to do so.

Q. What was your function inside the terminal?

A. To assist in maintaining the peace in any way I could.

Q. And what did you do while there?

A. We went in and—actually, to tell the truth, I didn't do a thing.

Q. What did these Freedom Riders do while they were in there?

A. They came in, purchased tickets and went directly from the ticket counter to the lunch counter and purchased coffee.

Q. Was it at that time they were arrested?

A. Yes, they were.

Attorney Gray: That's all.

Deputy Solicitor Riggs: We have no further questions.

[fol. 160]

STATE'S EXHIBIT 1

(See opposite) ☞

SHERIFF BUTLER ARRESTS 'FREEDOM RIDERS'

[fol. 161] Deputy Solicitor Riggs: The State rests.

Attorney Gray: We would like to file a motion, Your Honor.

The Court: All right.

Attorney Gray: To exclude the State's evidence.

The Court: This is the same thing you handed me the other day, isn't it?

Attorney Gray: No, sir.

The Court: You didn't have it in the form of a motion the other day, but it includes practically the same objections.

Attorney Gray: Some of that is included. A portion of the latter part is included. The first part is not included, and the last part is not included. And, Your Honor, we are introducing similar motions, and it is understood—

The Court: It is understood this same motion is introduced as to each case because we are trying all of them collectively, and the same ruling will apply to each one. That is understood and agreed?

Attorney Gray: Yes, sir.

The Court: Is this a part of it?

Attorney Gray: That is an exhibit we are filing.

The Court: I am not concerned with that. I am only concerned with the evidence which has been before this Court. What I would be concerned with is the evidence before this Court as to whether there is a prima facie case made out.

Attorney Gray: Exactly. We raise that in the motion.

Deputy Solicitor Smith: We move to strike the exhibit.

The Court: I don't understand why it was filed. Is this something that was tried in some other Court?

Attorney Gray: Yes, sir.

Deputy Solicitor Smith: Is this a transcript of the testimony in another proceeding which you are incorporating in your motion to exclude in this case?

[fol. 162] Attorney Gray: It is offered as an exhibit to Ground 19 of our motion, and what we are in effect saying is that the same issues that are involved in this case are issues which have already been decided by a competent Court, and that Court held that these particular prosecutions were for the specific purpose of enforcing segregation. Now, we take the position that that amounts to res adjudicata, and we are attaching as part of our exhibit—

Deputy Solicitor Smith: Now, what Court has made that holding? What Court of competent jurisdiction has made that?

Attorney Gray: The United States District Court.

Deputy Solicitor Riggs: Is the State of Alabama a party in that case?

Attorney Gray: The Attorney General of the State is a party, the Solicitor of this Circuit is a party, the Sheriff of this County is a party.

Deputy Solicitor Smith: You are saying that these criminal offenses have been tried by the Federal District Court?

Attorney Gray: If you will notice, Ground 19 of the motion says: "To convict the defendant on the facts of this case which are the precise facts upon which the United States District Court for the Middle District of Alabama adjudicated rights between the defendant and the State of Alabama, and its aforesaid agents would be in violation of Article VI of the United States Constitution, the supremacy clause." In Lewis and others versus Greyhound and others, Case No. 1724-N the transcript of the Record and judgment of which are appended hereto, marked Exhibits A and B and made a part hereof, the United States District Court for the Middle District of Alabama held that the arrest and prosecution of the defendant by the State of Alabama and its agents were, and we are quoting from that Court's opinion, "For the purpose of enforcing segregation"—

Deputy Solicitor Smith: Are you quoting from the Court's opinion, or a statement made by the Court when the opinion was rendered?

Attorney Gray: I am quoting from the Court.

Deputy Solicitor Smith: The opinion of the Court, the order of the Court, or the statement made by the Court at [fol. 163] the time he read it?

Attorney Gray: Now, if you would let me finish reading.

Deputy Solicitor Smith: I just wanted to get it straight.

Attorney Gray: "For the purpose of enforcing segregation" and said determination precludes any contrary findings herein.

Deputy Solicitor Smith: Now, let's see if we understand. Is this the proceeding in which the Solicitor of the Fifteenth Judicial Circuit was made a party?

Attorney Gray: That is right.

Deputy Solicitor Smith: And an injunction of the several prosecutions which were before this Court were at issue?

Attorney Gray: That's right.

Deputy Solicitor Smith: Well, do you contend to this Court that the issues in this proceeding were decided by the Federal District Court?

Attorney Gray: I contend the Federal District Court held the purpose of this proceeding for the specific purpose of enforcing segregation.

Deputy Solicitor Smith: Is that part of that Court's order?

Attorney Gray: Yes.

Deputy Solicitor Smith: That was part of his order?

Attorney Gray: Yes, sir.

Deputy Solicitor Smith: Show the Court where it was part of his order.

Attorney Gray: It is all in the opinion.

Deputy Solicitor Smith: Take the opinion and show it to the Court.

Attorney Gray: If the Court wants to see it I will.

The Court: These are criminal cases, and the other is a civil case.

Deputy Solicitor Smith: The State moves to strike these exhibits to this motion to exclude. They would not be proper exhibits to this motion.

[fol. 164] The Court: The Court will grant your motion. I don't think they have a thing to do with criminal cases, and I will overrule this motion to exclude the State's evidence.

Attorney Gray: Your Honor, we would like to make a motion, make an offer for the Record on appeal in the event it is necessary, to offer these exhibits to go as a part of this Record even though the Court has stricken it.

The Court: Well, sure, it would go up. I think that is absolutely fair to take any exhibits to the Court. It will go up as part of the Record in this case, and should go up.

Attorney Gray: We take exception to the Court's ruling, and our first witness is Mr. McRea.

The Court: The Court holds this is part of the Record that comes up under his motion to exclude it on the ground

that is a civil case and this is a criminal case, and the civil case has no application in this criminal case.

[fol. 165]

Defendants' Evidence

RANDALL MCREA, having been duly sworn, was examined and testified as follows:

Direct examination.

By Attorney Gray:

Q. Will you state your name, please, sir?

A. Randall McRea.

Q. Tell us what relationship, if any, you have to the Trailways Bus Terminal located in Montgomery, Alabama.

A. I operate the Trailways Bus Depot as an individual doing business as the Trailways Bus Depot of Montgomery.

Q. Will you tell us whether or not that terminal is in the business of providing accommodations for interstate passengers?

A. It is.

Q. What bus companies operate through that terminal?

A. Capitol Trailways, Colonial Trailways, and Continental Crescent Trailways.

Q. Now, are those bus companies engaged in interstate commerce?

A. They are.

Q. Will you tell us whether or not you have as a part of the facilities at the bus terminal there various waiting rooms?

A. We do have.

Q. And did you on or about the 24th day of May, 1961, have a white waiting room and a colored waiting room?

A. We did.

Q. And will you us what facilities are in each?

A. Well, there are rest room facilities, ticketing facilities, chairs in the waiting rooms, and there are restaurant facilities.

Q. And that's true in each?

A. That's correct.

Q. And at that time, that is on May 24th of this year, were signs over each of the waiting rooms designating race?

A. They were.

[fol. 166] Q. Do these bus companies either operate or have any control over the bus terminal?

Deputy Solicitor Smith: I object to that, if the Court please, I don't see what bearing that has on this case.

Attorney Gray: I will be glad to tell you. The basis of our defense is that these persons were passengers in interstate commerce. As passengers in interstate commerce they had an absolute right to use all of the facilities in the bus terminal whether they were ear-marked colored or white, or whatever they were. And we are only trying to establish the fact that they were in interstate commerce, that the bus terminal is under the supervision, operation or control of the carriers. That's all.

Deputy Solicitor Riggs: I would like to cite corpus juris secundum, disorderly conduct, Section 2, wherein it is stated the fact that the particular acts committed are intrinsically unlawful—

The Court: I am thoroughly aware of that. I know the law that where under ordinary circumstances would not be disorderly conduct or breach of the peace, but under particular circumstances it is, it all depends on the circumstances. These people had just been passing through Montgomery and went over to the counter to eat there wouldn't be any doubt about it. But every case rests on its own bottom. I will let you go ahead and ask him.

The Witness: Let me have the question again, please.

The Court: I don't think there is any dispute as to the law.

Attorney Gray: I mean in a different situation that is the law. Whether or not—

The Court: The Court will say that, in interstate commerce if they just stopped there coming through Montgomery in regular travel and had done that there wouldn't be any doubt about it. But the law is they have a right in interstate commerce to go ahead and eat at the white place, or the black place, or anywhere they want to.

Attorney Gray: You ruled that I may proceed?

The Court: Yes. Go ahead.

[fol. 167] Deputy Solicitor Smith: You want to prove that this is an instrumentality of interstate commerce?

Attorney Gray: That's right. And that the facilities are an integral part of interstate commerce.

Deputy Solicitor Smith: Yes. We will make that stipulation.

The Court: The Court told you that. It doesn't mean they have to eat at the white counter, they can eat at anyone they want to.

By Attorney Gray:

Q. One further question, Mr. McRea. You testified there were ticket counters in both waiting rooms, didn't you?

A. That there were facilities to ticket people in each waiting room, yes.

Q. Now, would you tell us, sir, describe for us the front part of the Trailways Bus Terminal.

A. Well, on entering the waiting room from the Lee Street entrance, which is the front entrance, immediately to the left is the restaurant facility, there is a ticket and lunch counter, and there is booths which are part of the restaurant that are right under the window which faces on Lee Street.

Q. Now, will you tell us, sir, whether or not the front, near the front door of your entrance to the bus terminal is glass?

A. Yes, it is. There is a large window.

Q. Will you tell us what color are those glass panes in those windows?

A. They have a green tint on them, a very light green tint on them.

Q. And that is true of all of those windows, isn't it?

A. The front windows, yes.

Q. And will you describe for us the location of the counters, the lunch counters in your terminal, with respect to these windows?

A. The one counter, as I said, when you come into the depot from the Lee Street entrance, that immediately to your left, it runs almost from the entrance door to that wall. And then immediately under that window is booths, and then the counter runs toward the ticket counter down [fol. 168] the center of the building. And then in the other

waiting room there is a horseshoe counter for the restaurant.

Q. If a person, Mr. McRea, was across the street would he be able to look from across the street into the window and see someone seated at the lunch counter?

A. I would say so if he was looking for them.

Q. In view not considering the fact the window is tinted?

A. Well, this tint is a very mild, I will describe it, tint, similar to what you would have in the windshield of your automobile. It doesn't obstruct your view, it obstructs the glare.

Q. Now, where are these seats with respect to the windows, where a person is sitting at the counter?

A. Well, now, there are some I would say some ten feet from the window maybe.

Q. And how low are those windows?

A. Oh, I don't know exactly. I would say approximately four feet high, maybe.

Q. They begin about four feet from the ground?

A. Well, that or less. I don't know exactly.

Q. Do you know how high your stools are at the counter?

A. I just don't know. The normal height of a stool. I would say about as high as this. (Indicating)

Q. Approximately high as—approximately how high is your counter?

A. I don't know. I would say it is somewhere between two and one-half and three feet high.

Q. And, of course, if the counter was two and one-half or three feet high, then the stools would be substantially lower than the counter?

A. Yes, somewhat.

Q. It would be pretty difficult for someone across the street to see someone sitting on a stool at that counter?

Deputy Solicitor Riggs: We object to him leading the witness.

By Attorney Gray:

Q. Whether or not.

A. Well, I don't know that it would. I don't know that I [fol. 169] have ever looked in there. I know if you walk

down the sidewalk you can look in there and see anybody, but I never have looked from across the street. But if you walk down in front of the building you can look in and see.

Q. Now, would you be able if you were walking along the street, would you be able to see, and tell me whether or not this is true, the person who was sitting, say, parallel to the window?

A. Yes, you could see them. If they were sitting at the counter?

Q. Yes, sir.

A. Yes, you could see them.

Q. But could a person, could they or could they not, see people sitting on the long thing going toward the ticket counter from across the street?

A. Well, as I said, I never have looked from across the street. It would be less likely for you to see them, I would say.

Q. It would be pretty difficult, wouldn't it?

A. (No response.)

Q. Will you tell us, sir, whether or not the long end of the counter—that is the counter that runs from the door toward the ticket counter just about on the line with the structural part of the building, immediately before you get to the door, between the door and the window—

A. I believe that is a little to the left of the door. If you go in that door at the front entrance if you look it is a little to the left, to the left of the door, because if it wasn't it would be out in the middle of the waiting room.

Q. And there is between the door and between the window some solid construction?

A. There is.

Q. Which would mean that a person on the outside, the view would be blocked to see a person sitting on the lower end of that stool?

A. If he were standing right where that structure is, yes.

Q. Were you in the terminal the day these defendants were arrested?

A. I was not in the terminal proper, I was in the office upstairs in the rear of the building.

Q. Do you know whether the National Guardsmen were all outside the entrance to the bus terminal that day?

[fol. 170] A. There were National Guardsmen out in the street, yes. When I went in the building they were.

Q. Let me show you this picture, Defendants' Exhibit 1. On the day these defendants were arrested would you say that the National Guardsmen were outside substantially the same way they are in this picture?

A. I would say so, yes.

Q. Then it would be pretty difficult for anyone to see inside, wouldn't it?

A. This is the window right here I was speaking of. And, of course, you can see people standing there wouldn't obstruct the view. These men standing on the edge of the curb, if you walked down the sidewalk you could still see in that window.

Q. And those National Guardsmen didn't permit anyone to congregate right at the bus terminal, did they?

A. Well, I understand they didn't. I didn't give them their instructions but they evidently didn't.

Q. I show you State's Exhibit No. 1, and show you a picture of some of these defendants seated at the counter. Can you tell us whether they are seated at the long end of the counter going toward the ticket window, or whether they are seated at the end of the counter which is parallel to the window?

A. Well, I don't know that you can look at this picture and tell. I don't see anything in that picture that would give you a—

Q. Can you make out this object at the upper left?

A. That is where the cash register and the candy counter is, and I can't tell if it is. If it is, this is the part that runs long ways of the building.

Q. It would appear to be a long counter?

A. If that is the candy counter, it is. I don't see anything else in there that would show you.

Q. And then a person seated here, will you tell us whether or not it would be very difficult for a person across the street to see in the terminal and see these persons sitting there?

A. Let's look at that other picture you showed me, not [fol. 171] that one. As I say, I never have looked from

across the street. You could look in this window and see them there.

Attorney Gray: That's all.

Cross examination.

By Deputy Solicitor Riggs:

Q. Mr. McRea, referring to Defendants' Exhibit 1, this picture with the Highway Patrol cars, that is the Trailways Station?

A. Yes, sir.

Q. And those are the windows there?

A. That's right.

Q. And are they clear windows? I mean, you can see through them?

A. Yes, sir.

Q. I realize they are tinted.

A. Yes.

Q. Can you tell from where this picture was taken?

A. Well, it looks like it was taken from over about the Exchange Hotel Parking Lot, or Alex Rice.

Q. Does it appear to have been taken from the top of a building?

A. I wouldn't think so. If it had it would have more of the front of the building in it.

Q. Well, you see this line here?

A. Yes.

Q. Is that the center line of the street?

A. Yes.

Q. Could a person standing in approximately the center line of the street outside of the line of National Guardsmen see in that window to the lunch counter?

A. Well, I would say, for instance this man standing here could see in that window.

Q. All right. And could three white toughs who within the last minute had been kicked out of the bus station see in the window, and presumably might not even have been outside of the National Guard line up—

A. Well, if they were out front I would say they could see in all right.

[fol. 172] Deputy Solicitor Riggs: We have no further questions.

WILLIAM S. COFFIN, JR., having been duly sworn, was examined and testified as follows:

Direct examination.

By Attorney Pollak:

Q. Rev. Coffin, will you give us your name and residence?
A. William S. Coffin, Jr., I live in New Haven, Connecticut.
Q. And what do you do, Mr. Coffin?
A. I am University Chaplain of Yale University.
Q. You are an ordained minister?
A. Ordained Presbyterian.
Q. And do you have any public or semi-public position in addition to being Chaplain of Yale University?
A. Do you mean government connected?
Q. Yes.
A. I am on the National Advisory Council, the President's National Advisory Council of the Peace Corps.
Q. And you hold both of these positions now, and you held them both on May 25th, 1961?
A. That's right. You don't want other boards like Operation Cross Roads, Africa, and all that?

Deputy Solicitor Smith: We object to that.
The Court: Sustain your objection.

By Attorney Pollak:

Q. Rev. Coffin, can you recall when you decided to come to Montgomery in late May of this year?
A. Very clearly.
Q. When was that?
A. It was on Sunday, May 21st.
Q. Sunday, May 21st, the Sunday preceding your arrest?
A. That's right.
Q. And what event was it, or what events was it—

[fol. 173] Deputy Solicitor Smith: We object to his leading, if the Court please.

The Court: Overrule your objection. Go ahead.

By Attorney Pollak:

Q. What events was it that occasioned this decision?

A. A direct combination of two events. A friend of mine, one of the defendants, Mr. John MacGuire, who was born in Montgomery, telephoned me to notify me of the riot—

Deputy Solicitor Riggs: We object to what he telephoned him.

The Court: Yes. Not what he said.

By the Court:

Q. You had a conversation with John MacGuire.

A. And he referred me to the newspaper where I read there had been racial violence in Montgomery.

By Attorney Pollak:

Q. Will you tell the Court who Professor MacGuire is?

A. Professor of Religion at Wesleyan University in Middletown, Connecticut. The other one thing, I just finished preaching a sermon, Your Honor, in which I said—

Deputy Solicitor Smith: We object to what he said in his sermon, if the Court please.

The Court: Yes. Let's don't start on a sermon.

The Witness: I was just going to give the one point, Your Honor.

Deputy Solicitor Smith: We object to this.

The Court: All right.

The Witness: Very good. Let it stand at racial violence then.

Deputy Solicitor Smith: We object to him volunteering, if the Court please.

The Court: Overrule your objection.

By the Court:

Q. Go ahead. Just answer the questions and we will get along better.

[fol. 174] By Attorney Pollak:

Q. Rev. Coffin, Professor MacGuire has pointed out to you an article which you read in the newspaper?

Deputy Solicitor Smith: I object to leading the witness. He is leading the witness.

The Court: Let him lead him awhile. We will get along faster. Go ahead.

By Attorney Pollak:

Q. Did you decide as a result of that telephone conversation to travel to Montgomery?

A. I decided to give it my very careful consideration, and twenty-four hours later we decided to go.

Q. Now, when you say we, who are we?

A. Finally there were five of us from Yale and Wesleyan.

Q. Who were they besides yourself and Professor MacGuire?

A. From Yale, George Smith, a student at the Yale Law School.

Q. Is he a defendant here in the Court Room?

A. He is.

Q. You haven't identified Professor MacGuire for us. Will you tell us whether Professor MacGuire is white, or not?

A. He is white.

Q. Will you tell us whether you are white, or not?

A. I am white.

Q. And Mr. Smith, is he a Negro or white?

A. He is Negro.

Q. And that is three of you?

A. Yes, sir.

Q. Who else?

A. Professor Gaylord Noyce of the Yale, who is white; and Professor David Swift, the head of the Religious Department at Wesleyan University.

Q. Could you state very briefly to the Court what it was which led you as a group to make this trip?

Deputy Solicitor Smith: We object as a group, if the Court please.

[fol. 175] The Court: Overrule your objection. Let him go ahead.

The Witness: Although I am speaking for myself, I do represent the opinion of the group. All five of us happen to be committed Christians and we felt for a long time that segregation is not a matter of God's way.

Deputy Solicitor Smith: We object to this, if the Court please.

The Court: Well, leave out that part of what you felt.

By the Court:

Q. Why did you come down here? That is what we want to know, not how you feel about segregation or de-segregation, or what.

A. I think that is one of the reasons for coming down.

Attorney Pollak: If Your Honor please, I think the defendant's views with respect to immorality and the compatibility with a democratic ethic of segregation is certainly crucial to it.

Deputy Solicitor Smith: We are not concerned with his views. The issue is whether or not these people were guilty of conduct calculated to provoke a breach of the peace under the circumstances at the time they were arrested. What his views are I don't think has any part in this case.

The Court: If you object to it I will sustain your objection.

Deputy Solicitor Smith: We do object to it.

The Witness: May I say something?

Deputy Solicitor Smith: We object to the witness volunteering, if the Court please. I think he can answer all responsible questions that the Court rules are competent.

The Court: All right. Let him ask the question first. Go ahead, go ahead and ask him, then object.

The Witness: I am in a dilemma, Your Honor.

Deputy Solicitor Smith: We object to you volunteering. Let the lawyer ask you the questions please, sir.

The Witness: All right.

[fol. 176] By Attorney Pollak:

Q. Now, Rev. Coffin, you left New Haven on what day?

A. On Tuesday evening.

Q. And where did you go?

A. Went to Atlanta. New York then to Atlanta.

Q. These were the five of you whom you identified?

A. That's correct.

Q. Now, did you go immediately from Atlanta to Montgomery?

A. No. We spent the night in Atlanta.

Q. And what happened the following day?

A. The following day we took the bus from Atlanta to Montgomery.

Q. What bus was that?

A. The Greyhound.

Q. And were there still just five of you, Rev. Coffin, or were there others?

A. No. At that time we had picked up two more. These were two theological students from North Carolina.

Q. Are they two of the defendants?

A. Yes. Clyde Carter and Charles Jones.

Q. Is Clyde Carter white or Negro?

A. They are both Negro.

Q. And you had met them by pre-arrangement in Atlanta?

A. No. It was gratuitous. Arriving in Atlanta I met some students whom I met when I had been preaching at Southern and Moorehouse in February, and they introduced us to Mr. Jones and Mr. Carter.

Q. So the seven of you making common cause took the bus to Montgomery on the 23rd?

A. That's right.

Q. The 24th?

A. 24th it was.

Q. Now, did you then stay overnight in Montgomery?

A. That's correct.

Q. And what did you do on the morning of May 25th?

A. The morning of May 25th we decided to take a bus [fol. 177] from Montgomery to Jackson.

Q. What led you to make that decision, why did you decide you wanted to go to Jackson?

Deputy Solicitor Smith: Now, we object to the mental operation of the witness, if the Court please.

The Court: Overrule your objection. Go ahead.

The Witness: Our original plan had been to come to Atlanta and go through to New Orleans, and it seemed only right and proper to go on from Montgomery to Jackson, particularly as we anticipated a little trouble in Montgomery.

By Attorney Pollak:

Q. You anticipated little trouble in Montgomery?

A. That's right.

Q. Did you know on the morning of the 25th what, if anything, had happened to prior groups that traveled through Montgomery to Mississippi?

A. Yes. We heard that the two groups that left Wednesday morning—

Deputy Solicitor Smith: We object to what he heard, if the Court please.

The Court: I will let him testify. Go ahead.

The Witness: We acted on what we had heard, namely, that is that two groups that had left Montgomery on Wednesday morning had been allowed to leave unmolested.

By Attorney Pollak:

Q. Now, you have been in the Court Room, have you not, Rev. Coffin, during the course of the trial?

A. Yes, I have.

Q. The groups that you were referring to were the ones as to which there was testimony that they left on the 24th and had eaten with an integrated group at the Trailways Lunch Counter?

A. That's right.

Q. So then the seven of you were to set out as a group to Jackson, Mississippi; is that correct?

A. That's correct.

Q. Now, how did you get down to the bus terminal?

[fol. 178] A. When we left Rev. Abernathy's house we left under a heavy escort and were taken under escort through Montgomery to the Trailways Bus Terminal.

Q. This is just the seven of you?

A. We also had two or three who came along driving cars to see us off.

Q. Can you tell us who came along with you to see you off?

A. Rev. Abernathy and Rev. Wyatt Walker.

Q. They are two more of the defendants; is that correct?

A. That is right. And also Mr. Lee, Bernard Lee.

Q. Now, those three that you identified, are they white or Negro?

A. They are all Negro.

Q. And was there not another companion who went down with you to see you off?

A. Oh, yes. Rev. Shuttlesworth.

Q. Is Rev. Shuttlesworth white or Negro?

A. Negro.

Q. Now, when you arrived at the Trailways Bus Terminal where did you go?

A. We were taken around to the back of the terminal and the doors were open and the guards were there and just sort of ushered us into the white waiting room,—

Q. You spoke of guards. Were there guards around the back of the terminal?

A. That is right.

Q. Did you see any other guards as you drove up Lee Street to the terminal?

A. We were very impressed by the amount of guards we saw.

Q. How were the guards posted?

A. The block was cordoned off, and the National Guard was guarding the entrance to both sides so no vehicles could come through, and there were quite a few guardsmen on the far side of Lee Street, and also a few on the near side of Lee Street, and according to my recollection there were no people around there. The people were all on the far side.

Q. Now, I show you Defendants' Exhibit 1, Rev. Coffin, [fol. 179] and ask you if this is a picture of the general scene in front of the Trailways Bus Station?

A. Do you mean at the time we left?

Q. No. I simply want to locate it geographically. Do you recognize it? I am pointing now to the picture on the right hand of the page of Defendants' Exhibit 1, the picture which is entitled "Patrol, Militia Men Guard Bus Station."

A. I recognize that as the Trailways Bus Station.

Q. And as I understand your testimony, you approached the bus station from what would be the right hand of this picture; is that right?

A. That is right.

Q. Down Lee Street?

A. Yes, sir.

Q. And your testimony is that there were Guardsmen on the far side of Lee Street across from the bus station?

A. That is right.

Q. Would you say there were large crowds of people outside the bus station proper?

A. No. There were practically none as I remember in front of the bus station itself, and on the far side of the street I can remember being very impressed by thinking that the number of National Guardsmen seemed to almost outnumber the number of people who were simply watching.

Q. Would you be able to give us an estimate, Rev. Coffin, of how wide Lee Street is?

A. About seventy-five feet.

Q. Now, your testimony is as I understand it, your convoy was driven in behind the terminal?

A. That's correct.

Q. And you entered the terminal from one of the rear doors?

A. That's right, the one indicated to us by the National Guardsmen.

Q. Indicated to you by the National Guardsmen?

A. That is right.

Q. Did they indicate that the entire group should go in one particular door?

[fol. 180] A. It was very clear—I can't give you—as we got out this is the door we were supposed to go in, with National Guardsmen on one side and on the other side.

Q. So that your racially mixed group was instructed to go in the white waiting room?

A. It was perfectly clear we were being told what to do, we were under their guard, and there was no option as far as I could see in choosing between white and colored.

Q. Now, can you describe for the Court what you did, what you individually did, and what your companions did as far as you can recall when you entered the terminal?

A. The first thing we did was to go to the ticket counter and buy tickets to Jackson. The next thing we did was sit at the long end of the luncheon counter.

Q. The long end?

A. That is the one that goes away from the door and toward the candy counter.

Q. Now, I take it that not all of you bought bus tickets; is that correct?

A. Only those of us who were going out, the seven.

Q. And not all of you, but most of you, sat at the lunch counter?

A. There was not room enough for everybody. There is quite a distance, actually, from the counter seats to the door, and then there are not more than nine, I would say, I cannot say how many, seats along this line.

Q. And does this picture which is State's Exhibit 1, does this correspond with your recollection of approximately how you were situated?

A. That's right. That photographer actually was standing up here on a chair to the—no, wait a minute—he was standing by the door, and the door is right here. (Indicating)

Q. And how are you able to orient yourself looking at this picture so as to say this is the long end of the counter?

A. This is the door, that is the candy counter over here, the tickets, and over here here is the back door through which we entered. (Indicating)

[fol. 181] Attorney Pollak: If I may, Your Honor, indicate for the Record?

The Court: All right.

Attorney Pollak: The witness has indicated the ticket booth and the rear door of the bus terminal, neither of

which is seen in the picture, are from the viewers' prospective to the rear, above the picture as it were, and that as the witness testified the photograph was obviously taken from the front of the terminal.

By Attorney Pollak:

Q. Do I understand your testimony that the candy counter visible in the upper left hand corner is what helps to orient you?

A. That's right. That is the long end of the counter.

Q. Are you able to identify, Rev. Coffin, any of the people seated at the counter with respect to the picture?

A. Yes, I am.

Q. Who is this closest to the camera?

A. I think that's Mr. MacGuire, by the certain contours of his head. And this is, I think, Professor Smith. This is myself, Rev. Abernathy, and Mr. Lee. And I am not quite sure of the rest of them, I can't make them out. This is Sheriff Butler and Captain Sevigny. (Indicating.)

Q. All right. Now, Professor MacGuire was nearest to the door and the last man at the counter?

A. That is my best recollection according to the picture.

Q. Now, Rev. Coffin, did you in my company today during the luncheon recess, did you in my company go to the Trailways Bus Terminal?

A. I certainly did.

Q. So that you have viewed the interior of the bus terminal very recently?

A. Interior and exterior.

Q. Of course, your testimony as to where the defendants were disposed is your recollection of what happened last May?

A. That is correct.

Q. I ask you whether you viewed the terminal with me today, because I want to ask you, Rev. Coffin, if you can help [fol. 182] the Court in indicating how visible to persons situated across Lee Street a group would be which was seated at what we have been calling the long side of the lunch counter. I believe you have testified that Lee Street is about seventy-five feet wide.

A. That's right.

Q. Could you help the Court by indicating in terms of dimensions of this Court Room how wide Lee Street would be?

A. Well, I think it is very apparent that there is a good sidewalk on both sides, and i is a four-lane two-way highway which leaves a good dea of room in the middle.

Q. As indicated by this pic ure, Defendants' Exhibit 1?

A. That's right. The street itself would be as wide as from here to the end of the Court Room.

Q. And what we are trying to determine is how well a person could see who was at least as far away as across the street—

Deputy Solicitor Smith: Now, we object to the form of this question, if the Court please. I think it is leading.

The Court: Well, we would probably save time by letting him ask. Go ahead.

Deputy Solicitor Smith: I withdraw the objection.

By Attorney Pollak:

Q. If you would examine again the picture at the right hand of defendants' Exhibit 1, and if you will note with me, and perhaps we can share it with the Court—can you identify for the Court what this large black appearing surface is? (Indicating)

The Court: Well, as far as this Court is concerned, I am familiar with that. Now, for the Record.

The Witness: For the Record, this is the terminal, this is the entrance here, these are the tinted windows which show dark there, and there is a door in the middle. (Indicating)

By Attorney Pollak:

Q. On either side of the front door can you tell from the picture are there substantial structural members?

A. Yes, there are. They are quite thick.

[fol. 183] Q. And would appear to be some feet wide?

A. That's correct.

Q. Now, from your recollection of the interior of the terminal with relation to the door, do I understand that what you describe as a long side of the counter proceeds from the front to the rear of the terminal; is that correct?

A. That is correct.

Q. And if you take the line of the counter as an axis along which to sight, if you stood right in back of Mr. MacGuire at the end, the Lee Street end of this counter, the long end of the l. nch counter as depicted in State's Exhibit 1, would you not be—

Deputy Solicitor Smith: We object to him leading, Your Honor.

The Court: Go ahead.

By Attorney Pollak:

Q. How would you be disposed, Rev. Coffin, with respect to the very substantial pillar to the left of the front door?

A. If the Court will permit, I will give a little fuller description.

The Court: Well, just answer his question.

The Witness: That the end of the counter would run right into the pillar next to the door. If you are on a direct line—

The Court: You have answered the question.

By Attorney Pollak:

Q. Rev. Coffin, can you tell the Court what the color is of the windows facing on Lee Street of the bus terminal?

A. They are green tinted windows in order to keep the sun out, and the shade would be down whenever the sun was shining.

Q. The shade, you said if the shade—

A. That's right, on both windows.

Q. What kind of a shade?

A. Regular venetian blind.

Q. One is able to see through the window, I take it, assuming the shade is up, one is able to see through it?

A. On the inside one can see through the window even [fol. 184] when the shade is down. From the outside it's a different story.

Q. And does the green tint in any way interfere in determining tints of objects or people seen through the window?

A. I wouldn't know. Well, I tried to determine from the other side of the street and I just couldn't see anybody.

Q. Oh, you yourself tried going across Lee Street?

A. That's right. I walked in front of Alex Rice's shoe store and down in front of the parking lot and down through the other side and I still couldn't see anyone.

Q. You looked through clearly and couldn't see yourself, you couldn't see other people?

A. I couldn't see anybody even at the short end of the counter at that time.

Q. I see. Now, Rev. Coffin, going back to the events of May 25th, you have told the Court that many of you purchased tickets and a number of you sat down at the lunch counter. Did any law enforcement, did any person speak to you, any person not in your group speak to you between the time you purchased tickets and sat down at the lunch counter?

A. No, no one at all.

Q. Now, when you sat down at the lunch counter what happened, did you order food or a cup of coffee?

A. I sat down next to Rev. Abernathy and wanted to pay for his cup of coffee, but he insisted on paying for mine.

Q. You were both served coffee?

A. That's right. The counter man told the girls—

Deputy Solicitor Smith: We object to this, if the Court please.

The Witness: To move off to one side.

Attorney Pollak: Don't testify, Rev. Coffin, to statements made by someone else.

The Witness: All right. I am sorry.

By Attorney Pollak:

Q. Did the counter man serve you?

A. The counter man served me, yes.

[fol. 185] Q. And was anyone in your presence to your knowledge denied food by the counter man?

A. No.

Q. Rev. Coffin, were you abusive or insulting to anybody at the terminal?

A. No, I was not.

Q. Did you raise your voice?

A. No.

Q. Did you say anything obscene?

A. No.

Q. Did any of your colleagues to your recollection?

A. Not that I recollect.

Q. You were seated at the counter. What happened next?

A. I would say there were some thirty people in the room, most of whom again seemed to be National Guardsmen, and also inevitably there is always a lot of press men, whether you want them there, or not, they are always there. And the next thing I knew Sheriff Butler was coming down the line tapping each of us on the shoulder saying we were under arrest.

Q. Is that what he said, were those the words you best remember?

A. As I best remember, "I place you under arrest," something to that effect.

Q. Did he say what you were under arrest for?

A. Yes. Breach of the peace and unlawful assembly.

Q. And what happened next?

A. The next we were told to line up in twos and we were herded out into this paddy wagon, or whatever the official name is for it, a car, and taken up to the Montgomery County Jail.

Q. All eleven of them?

A. All eleven.

Q. But I think it was your testimony that not all of the eleven of you were seated at the lunch counter?

A. That is correct.

Q. Do you recall, or don't you recall, which of you were [fol. 186] not seated at the lunch counter?

A. I know for sure Mr. Walker was not and, I think, Mr. Carter.

Q. Could you identify for the Court which are Rev. Walker and Mr. Carter?

A. Rev. Walker is in the green suit, the second man over there, and the first man on this side is Mr. Carter. (Indicating)

Q. And Rev. Walker and Mr. Carter, I think you testified, are Negroes?

A. That's right.

Q. Had Sheriff Butler said anything to you at all at the terminal before he came up to arrest you?

A. No. We were completely following the instructions from the time we left Rev. Abernathy's house and placed ourselves in charge of the military, they took us down to the bus station, told us when to get out, told us in what door to go, showed us where the ticket counter was. So we had no instructions at all beyond that until in substance we received instructions from Sheriff Butler after having arrested us that we were to get in the paddy wagon and go off to jail.

Q. No one said to you, "Please don't sit down at the lunch counter"?

A. No one said a word to us. We were given no cautionary words at all about any of our actions.

Q. Have you heard Colonel Pearch testify here, Rev. Coffin?

A. I have.

Q. Do you remember seeing Colonel Pearch at the bus terminal?

A. I do.

Q. Did he say anything to you at all?

A. He didn't say a word. Nobody said anything to us.

Attorney Pollak: No further questions.

Cross examination.

By Deputy Solicitor Smith:

Q. Rev. Coffin, when your group reached the Trailways Bus Terminal who preceded you into the terminal, or were you first?

A. Was this on Thursday?

Q. Thursday, May 25th, just prior to your arrest.

A. I couldn't tell you, Mr. Smith, just exactly who went in first.

[fol. 187] Q. How many of you were in the group transported from Rev. Abernathy's home to the bus terminal?

A. Eleven, I think. There may have been one or two drivers who didn't come in.

Q. Did you proceed from Rev. Abernathy's home to the bus terminal in separate vehicles?

A. We were in two or three vehicles, and then there were the escort vehicles.

Q. How many escort vehicl.. accompanied you?

A. An estimate of about three or four, I think.

Q. Three or four escort vehicles?

A. Yes.

Q. You don't recall who preceded you into the terminal?

A. I know there was an escort vehicle going out ahead of us with the siren going very strongly.

Q. Did each of you alight from the vehicles in which you were transported there at approximately the same time?

A. Well, the convoy pulled up at approximately the same time, yes.

Q. And did each of you as a group enter the Trailways Bus Terminal at this time?

A. Did we enter as a group?

Q. As a group?

A. Yes, all of us.

Q. And after entering the terminal you and your group went directly first to the ticket counter; is that correct?

A. That's right. Those who were going on to Jackson.

Q. Did every member of the group accompany you to the ticket counter?

A. I was the first as I remember.

Q. You were the first of the group to purchase your ticket?

A. I think so.

Q. And what was the destination of the ticket you purchased?

A. Jackson.

Q. Jackson, Mississippi?

A. And I still have the ticket.

[fol. 188] Q. All right. Now, were each of your group served at the lunch counter?

A. To my recollection every one. There was a possibility —I know I hardly got my coffee, and I was one of the first

there, before I was arrested. I am not sure that everybody—

Q. Were you served at the counter simultaneously or individually?

A. Individually.

Q. You purchased your ticket and then you proceeded to the lunch counter?

A. That's right.

Q. As an individual?

A. As an individual.

Q. Who followed you to the counter?

A. I found myself next to Mr. Abernathy when I got there.

Q. Did you seat yourself at the counter?

A. I did.

Q. And Ralph Abernathy followed you to the counter?

A. Rev. Abernathy sat down next to me.

Q. Who followed Rev. Abernathy?

A. I couldn't tell you.

Q. Over what period of time would you estimate had intervened between the purchase of each of the travelers of tickets and the seating at the lunch counter and requesting service?

A. Well, as you established yourself, we were moving individually at this point. It took me about, oh, I guess, about a minute, so from the purchase of the ticket and stood around for a bit and went over and sat down at the counter.

Q. So you stood around after purchasing the ticket before you sought service at the counter; is that correct?

A. Yes.

Q. My question is whether or not each of you individually sought service at the counter, or did you as a group seek service?

A. No. We went individually.

Q. Did you place an order individually?

A. I did, yes.

[fol. 189] Q. Did Rev. Abernathy?

A. Yes.

Q. Do you know whether or not Wyatt Tee Walker sought service, or not?

A. No. I think it has been established he didn't even sit down.

Q. Well, was he served?

A. I don't think so.

Q. Was Charles Jones?

A. I don't know.

Q. Was Clyde Carter?

A. Again, I don't know.

Q. Was Professor Swift?

A. I think I told you, Mr. Smith, I was sure about Mr. Abernathy and me, we were having a cup of coffee together. Whether any of the others were served, I do not know.

Q. Were any of the others served?

Attorney Pollak: Your Honor, the Prosecutor has asked this question three times, and three times the witness has told him that he knows only of his own knowledge about himself and Rev. Abernathy who respectively were served coffee.

The Court: I will let him ask him again because he has testified previously to other people sitting there and I had it marked on my notes.

Attorney Pollak: He testified, if my recollection is correct, Your Honor, with respect to everybody sitting down, all those who did sit down, and he indicated to his best knowledge; and now he is asking something more.

The Court: I will let him cross examine him because I have marked here the ones he said before, and now he says there were two. Overrule your objection.

By Deputy Solicitor Smith:

Q. Was Professor Swift served, Rev. Coffin?

A. As he was seated, I think, two away from me, I believe he was, and I believe Professor MacGuire was served.

Q. Let us go on to Professor Noyce.

[fol. 190] A. May I explain why I hesitate in my answer?

Q. Just answer my question, please. Was Professor Noyce served at the counter?

A. I can't tell you.

Q. You don't know whether he was, or not?

A. No, I don't.

Q. Did he seek service?
A. I can't tell you.
Q. Did any of the others seek service?
A. Yes.
Q. Which others?
A. Mr. MacGuire, Mr. Swift. The counter was filled, those eight or nine, whatever seats they are. I assume they asked for a cup of coffee.
Q. By your group?
A. By our group.
Q. All right. Now, were each of you served?
A. Do you mean of those seated?
Q. Yes.
A. I can't tell you.
Q. Were you served?
A. I was.
Q. When did you decide along with the group to go to the Trailways Terminal?
A. We decided on Thursday morning.
Q. Who was present when the decision was made?
A. The defendants seated here, the eleven.
Q. Each of them?
A. That's right.
Q. Were any other persons present?
A. Only those who had been—well, Mrs. Abernathy and others who had given us breakfast.
Q. What time did you arrive at the decision to go to the bus terminal?
A. Actually, the five of us who had come down from New England and Atlanta had decided early that morning.
[fol. 191] Q. What time?
A. I couldn't tell you what time. The next day I got over to Rev. Abernathy's house and Mr. Jones and Mr. Carter were already there as I recall.
Q. Was it while you were present the decision was made to later depart?
A. The decision to go to Jackson was eminently the decision of every person in there.
Q. Do you know whether there was a discussion by anybody with respect to your departure other than by your group?

A. Other than in our group?
Q. Yes.
A. No.
Q. You don't?
A. No.
Q. Who decided to call a press conference?
A. Mr. Smith, the press is always on you, I know that.
Q. Who decided to call the press conference is my question.
A. I don't know offhand who did.
Q. Was there a decision to call the press conference?
A. The press is always following you.
Q. Was there a decision to call a press conference is my question.
A. Your Honor, I am here to tell the whole truth, if I may continue.

By the Court:

Q. Just answer his questions and we will get along faster.
A. A decision was made.

By Deputy Solicitor Smith:

Q. Did you make the decision?
A. No, I didn't.
Q. Were you present when the decision was made?
A. No. I heard there was going to be one.
Q. You heard there was going to be a press conference. From whom did you hear that?
A. Just generally. It is the most natural thing to anticipate when the papers are after you that some press [fol. 192] conference is going to be set up, it is the only decent thing to do.
Q. Who called Mr. Jenkins of the Alabama Journal?
A. I don't know.
Q. You don't know?
A. No.
Q. When did you hear there was going to be a press conference?
A. That Thursday morning.
Q. That Thursday morning?

A. Yes.

Q. From whom did you hear it?

A. Again, I told you I don't know.

Q. All right. Now, Rev. Coffin, did you consult any person other than the group which accompanied you from New Haven, Connecticut, to New York and to Atlanta and Montgomery relative to your departure originally from New Haven, Connecticut?

A. Before making the decision to come down here I sought the best wisdom of people whose opinion I respected.

Q. Did you consult Martin Luther King?

A. Yes, I did.

Q. When did you consult him?

A. I telephoned him, it was Tuesday morning, I believe.

Q. It was Tuesday morning?

A. Late Tuesday morning.

Q. That would be Tuesday, May 23?

A. That's right.

Q. The day preceding your departure?

A. That's right.

Q. Where was he by telephone when you consulted him?

A. He was already in Montgomery, as I recall.

Q. So you telephoned Martin Luther King from New Haven, Connecticut prior to your decision to leave New Haven?

A. That's right.

Q. Who else did you consult?

A. Various friends.

[fol. 193] Q. Did you consult any members of the staff of the Attorney General of the United States?

A. Somebody from the staff already called me.

Q. And who telephoned you?

A. Your Honor, this is something, I don't know whether I should divulge the name, or not.

By the Court:

Q. Go ahead and tell whose name. You are on the witness stand to tell the truth.

A. It was Mr. Burt Marshall.

By Deputy Solicitor Smith:

Q. Mr. Burt Marshall?

A. That's right.

Q. And did you know prior to this time Mr. Burt Marshall?

A. Did I know him personally?

Q. Yes.

A. No, I did not know him personally.

Q. What was his position in the office of the Attorney General of the United States?

A. Assistant to the Attorney General.

Q. Assistant to the Attorney General of the United States.

A. That's right.

Q. He telephoned you relative to your departure?

A. That is right.

Q. When did that conversation take place?

A. Again, Tuesday.

Q. The Tuesday preceding your departure on Wednesday?

A. That's right.

Q. What was said in that conversation?

Attorney Gray: Objection, Your Honor. That is irrelevant.

The Court: Sustain your objection.

By Deputy Solicitor Smith:

Q. Did he encourage you and this group—

Attorney Gray: We object.

[fol. 194] The Court: Overrule your objection.

By Deputy Solicitor Smith:

Q. To come from New Haven, Connecticut, to Atlanta and to Montgomery, Alabama?

A. You overruled the objection?

The Court: Yes.

The Witness: I acquainted Mr. Marshall, made it very clear—

The Court: Don't tell that, just answer the question.

By Deputy Solicitor Smith:

Q. Did he encourage you and your group to depart from New Haven, Connecticut, to Atlanta and Montgomery, Alabama?

Attorney Pollak: Your Honor, I don't see how the witness can answer that without violating Your Honor's instructions in answering without giving hearsay testimony.

The Court: Well, he didn't say what he said. I stopped him. I stopped him from saying that. He asked if he encouraged him.

By the Court:

Q. Professor, that should be easy to answer. Did he encourage you or didn't he?

A. Well, you know, we professors try to tell the whole truth. Can I tell him in my own words?

Q. Well, they object to it. I don't mind you telling all of it.

A. All right. Very good. I will tell the whole thing now.

Q. Well, now, wait. The lawyer has a right to object.

By Deputy Solicitor Smith:

Q. Answer my question first. My question is simply whether or not he encouraged you and your group?

A. I am going to answer the way the Court instructed me to. Mr. Marshall telephoned, Your Honor, and he said, "I am not in any way intending to interfere with what is obviously an entirely private decision, you must make up your own mind whether you want to go, or not. I simply ask that you give this decision very careful consideration." Which I certainly did.

[fol. 195] Q. What relation does Martin Luther King, or did Martin Luther King have on May 23 with the Congress of Racial Equality, commonly referred to as CORE?

A. To my knowledge he has none.

Q. Did he have any position with that organization?

A. No, not to my knowledge.

Q. What is the Southern Christian Leadership Conference?

A. That is a group primarily of Negro ministers in the South, which is a group that grew out of the Montgomery Improvement Association.

Q. What relation on May 23 did Martin Luther King have with SCLC?

A. Do you mean SCLC?

Q. Yes.

A. He was one of the directors, I believe. I don't know his exact title.

Q. What position did the defendant, Wyatt Tee Walker, have with SCLC?

Attorney Pollak: If it please the Court, I dislike to break up the questioning, but I fail to see the relevancy of it, and I take it the Southern Christian Leadership Conference is not a defendant in these proceedings.

Deputy Solicitor Smith: Wyatt Tee Walker is a defendant, and as I understand it, he is the Executive Director of SCLC.

The Court: Overrule your objection. If he is, I will let him ask him, if he knows.

The Witness: I chink he is the Executive Director.

By Deputy Solicitor Smith:

Q. Wyatt Tee Walker, in your judgment, is Executive Director of SCLC?

A. That's right.

Q. And was on May 23?

A. That's right.

Q. Did you consult him prior to your departure?

A. No. I consulted Dr. King only as a personal friend.

Q. I see. Who paid your expenses or agreed to pay your expenses, Rev. Coffin, for this trip?

A. The last one, the last I made?

[fol. 196] Q. Yes.

A. Oh, we all paid out of our own pocket.

Q. Were you reimbursed for any expense which you incurred on this travel?

A. I personally was not. There were friends—

Q. Were the other defendants in this group reimbursed?

A. Oh, there were a lot of friends at Wesleyan University who collected money from the students and faculty and insisted on—

Deputy Solicitor Smith: Your Honor, we are going to object to this.

The Court: He wasn't talking about that. He just asked if you were reimbursed by any organization or it came directly from any organization.

The Witness: No.

Attorney Gray: Your Honor, I would like to know which one of these trips. They have been down three or four times.

The Court: He is talking about the initial ride, the initial arrest, not about any of these others.

By Deputy Solicitor Smith:

Q. Now, is it your testimony that—

A. No organization.

Q. That others of this group have been reimbursed but you have not for your expenses?

A. My testimony is that there are many friends in Wesleyan and Yale who raised money in order to pay for any expenses that we had immediately or might be incurred in the future.

Q. All right. Now, was that expense money raised prior to your departure?

A. No.

Q. It was not?

A. No.

Q. Was any mention made of raising money by the group at Yale to finance your travel to Montgomery?

A. No. Practically no one knew we were going to Montgomery.

Q. All right. Did you have a press conference and was it announced publicly to the press and to other news media [fol. 197] that you and this group were to depart from New Haven, Connecticut, for Montgomery?

A. No. There was no press conference, no announcement made.

Q. Do you know whether there was any announcement made of your departure?

A. None whatsoever.

Q. When you arrived in Atlanta was there any announcement made of your departure?

A. We were told that there would be a press conference, and there was a press conference on Wednesday morning.

Q. Who told you there would be a press conference in Atlanta?

A. It was Dr. James Wood, I think.

Q. Who is Dr. James Wood?

A. He is also, or at least at that time, was of the Southern Christian Leadership Conference.

Q. When were you told by him there would be a press conference in Atlanta?

A. On Wednesday morning.

Q. What was the purpose of the press conference?

A. The press had found out we were down there and once again, when there are several people who want to see you, the only decent thing to do is to get together at one place and allow them to talk.

Q. Were you present at this press conference?

A. I was present at the conference.

Q. Did you make any statement at the press conference?

A. As I recall, I answered some questions.

Q. Now, when you arrived in Montgomery on Wednesday, May 24 in your judgment how many people were at the Greyhound Bus Terminal when you arrived?

A. Well, it is, I found, a little hard to estimate because I got out of the bus and was in a car almost immediately, but there were several hundred there.

Q. Several hundred outside of the station?

A. Yes, outside of the station, around the station.

Q. Were any National Guard Troops present?

A. Many National Guards.

[fol. 198] Q. Many National Guard troops?

A. Many of them.

Q. Were any Federal United States Marshals present?

A. I would not have known.

Q. You would not have known?

A. No.

Q. Now, I believe from New York your group traveled to Atlanta by plane; is that correct?

A. That is right.

Q. And from Atlanta you decided by bus to proceed to Montgomery?

A. That is correct.

Q. Now, did you and your group call yourselves so-called Freedom Riders?

A. We didn't call ourselves so-called Freedom Riders. We didn't call ourselves anything.

Q. Did you not decline to call yourselves Freedom Riders?

A. No, I did not decline.

Q. Did anyone in your group say, in fact, they were not Freedom Riders?

A. Not to my recollection.

Q. Not to your recollection?

A. That's right.

Q. Either in Atlanta or in Montgomery? After arrival?

A. That is correct.

Q. Who, if anyone in your group, denied they were so-called Freedom Riders?

A. That was a very loose term designed to attach to us.

Q. After arriving at Montgomery where did you go?

A. We went to Rev. Abernathy's house.

Q. How were you transported there?

A. By car.

Q. Was there a brick thrown at the car on departure from the Greyhound Terminal grounds?

A. Not while we were in it.

Q. Was there any disturbance or incident apparent to you at the Greyhound Bus Terminal the night of your arrival?

[fol. 199] A. The night of our arrival, it being five o'clock and it being the natural time for a lot of people to come out of work and all, it was an exceptionally large crowd as I estimated it. There was also some hooting and hollering. And the thing that surprised me was how little there was, not how much.

Q. Now, the next morning didn't you say your group decided to depart Montgomery and go to Jackson, Mississippi?

A. That's right. We had every assurance that two other groups had gone ahead and that was the natural thing for us then to do.

Q. Now, of your group, Ralph Abernathy, Fred Shuttlesworth, Bernard Lee and Wyatt Walker, did not plan or intend to depart from Montgomery for Jackson, Mississippi, did they?

A. That's right.

Q. But contrary of your group, Charles Jones, Clyde Carter, Professor Swift, Professor Noyce, Dr. MacGuire and George Smith did plan to proceed to Jackson, Mississippi; is that correct?

A. That's right.

Q. Rev. Coffin, who is paying for the defense in these cases?

Attorney Gray: Your Honor, why we have no mind in testifying about it, we feel the State shouldn't certainly ask such questions, it is purely irrelevant on this ground, because they arrested them, caused them to come down and make bond and then ask who is paying it. We feel it is entirely improper.

Deputy Solicitor Smith: We feel it is material, if it please the Court.

The Court: I will let him ask him if anybody is paying other than them.

The Witness: The money for transportation we are sharing responsibility completely for our transportation back and forth.

By Deputy Solicitor Smith:

Q. Who is paying the counsel fees?

A. The counsel fees are probably paid mostly by the N.A.A.C.P.

Q. And who posted the cash bonds that you and the other defendants posted?

[fol. 200] A. The Professors at Wesleyan University and at Yale University.

Q. Now, Rev. Coffin, did you see two white toughs, I believe, as Colonel Ralph Poarch has described them, after

you and your group entered the Trailways Bus Terminal, pour coffee on the lunch counter seats?

A. No, I did not.

Q. You did not see that?

A. No.

Q. Did you see two white toughs escorted from the terminal at about the same time you and your group arrived?

A. No, I did not.

Q. How many people were outside of the station, in your opinion, at the time of your arrival?

A. When we came in the far end of the street which is blocked off, I remember seeing at the far end of the street, there seemed to be none around the entrance itself to the Trailways Terminal, and the far end of Lee Street on the other side where the shoe store and the parking lot are, it was lined with Guardsmen, and behind the Guardsmen was a sprinkling of a crowd, probably more curiosity seekers coming out of the store and parking lot to see what was going on.

Q. How many people were inside the terminal at the time you arrived?

A. My estimate was around twenty-five, thirty, something like that.

Q. Did that include police officers and everybody else?

A. That's right.

Q. Colonel Poarch?

A. Colonel Poarch.

Q. And Guardsmen?

A. And Guardsmen, and Captain Sevigny.

Q. Now, Mr. Pollak has asked you with regard to this exhibit, and I believe relative to your visit during the noon recess. I show you Defendants' Exhibit 1. Did you attempt in front of this terminal depicted in this picture, the right hand corner of Defendants' Exhibit 1, to view the lunch counter from the center line of the street in front of it?

A. On the day we went there?

Q. Today.

A. Well, yes, from the center and the far side as well.

[fol. 201] Q. From the center line of Lee Street, if that is the street in front of the building, you attempted on this

date to view the lunch counter through the window on front of the building; is that your testimony?

A. Right. A very brief attempt, and there was also an attempt at the other point.

Q. There was a very brief attempt you say?

A. Yes.

Q. Well, did you get a good look?

A. No.

Q. You did not?

A. I got a little bit, that is all. I could see the near side of the counter but couldn't see the other side.

Q. Did you, Rev. Coffin, or anyone in your group when the request for National Guard troops to escort you and your group to the terminal. state to any of the officers, the escort officers, that you planned to seek the integrated use of the facilities at the terminal?

A. I didn't.

Q. What was said to Colonel Poarch or any of the other officers that escorted you and your group to the terminal, the Trailways terminal?

A. Nothing to my knowledge.

Q. Nothing to your knowledge?

A. Just that we were going to the Trailways Terminal.

Q. Did you announce or did anyone in your presence announce to the group of newsmen and other news representatives at Rev. Abernathy's house that you would seek full use of all the facilities at the terminal prior to departure?

A. I can't recollect. I know I didn't.

Q. Was that your intention when you departed from Rev. Abernathy's house?

A. I say this again, I don't know whether that was a group decision. I remember that—

Q. That was your intention?

A. It was my personal one, yes.

Q. When you came to Montgomery I believe you testified [fol. 202] in response of Mr. Pollak's question that you fully anticipated trouble in Montgomery, did you not?

A. No. I said we fully anticipated no trouble.

Q. Did you not testify that you anticipated trouble in Montgomery?

A. No. I think I testified—

By the Court:

Q. Anticipated a little trouble?

A. Little trouble in Montgomery. You remember, Mr. Smith, that two groups had gone there the day before.

By Deputy Solicitor Smith:

Q. Did you not testify you anticipated a little trouble in Montgomery?

A. I said little in the sense of—I anticipated little trouble. When you say it that way that means particularly—that means practically—

Q. Negatively speaking?

A. That's right. No trouble.

Q. Rev. Coffin, did your news media in New Haven, Connecticut, subsequent to Saturday, May 21, depict scenes of the mob and violence which occurred at the Greyhound Bus Terminal on the Saturday preceding your departure on Wednesday for Montgomery?

A. I wasn't in New Haven that Saturday. I did see the Sunday New York Times about it.

Q. Were there pictures of mob violence at that time?

A. Yes, sir.

Q. Did you observe those pictures?

A. I certainly did.

Q. Did you have full knowledge of what had transpired at the Greyhound Station on the Saturday preceding your departure on Wednesday?

A. I most certainly did.

Q. Was this violence which had preceded your departure generally known among each of the defendants prior to your departure?

A. Each of the defendants felt that—

Q. Now, I didn't ask that question. I said was it generally known?

A. Yes, sir. The objection to racial violence was what prompted us to come down.

[fol. 203] Q. It was generally known there had been mob violence at the Greyhound Terminal on the Saturday preceding your departure on Wednesday?

A. That is exactly so right, and cannot be denied. It would be a full and correct statement of it.

Q. Rev. Coffin, I show you State's Exhibit 1 and ask you first if you can identify this exhibit?

A. I don't think I can identify it as Exhibit 1.

Q. Well, as to the photograph.

A. Yes.

Q. What does it depict?

A. It depicts our arrest by Sheriff Butler.

Q. Depicts your group at the time of the arrest?

A. That's right.

Q. Can you identify this person in the photograph? (Indicating)

A. No, I can't.

Q. You can't?

A. No.

Q. Can you identify this person? (Indicating)

A. No, I can't.

Q. Can you identify this person? (Indicating)

A. Yes, sir.

Q. Who is that one?

A. Rev. Abernathy.

Q. Can you identify this person? (Indicating)

A. I said I thought that was Mr. MacGuire. This is Professor Swift. And the others I can't.

Q. Looking at the picture and the defendants, can you identify who this person is? (Indicating)

A. Looks too portly for any of the defendants.

Q. Looking at the defendants and then back to this picture, can you identify this person? (Indicating)

A. Looks like a young Mr. Shuttlesworth, but I don't think it is Mr. Shuttlesworth.

Q. In your best judgment, it is Fred Shuttlesworth, isn't it?

[fol. 204] A. If you tell me I will believe it, but I wouldn't recognize him.

Q. I am not telling you, I am asking your opinion.

A. I cannot identify him.

Q. It is your testimony that each of the defendants with the exception, I believe you said, Carter and Walker, were

served at that counter immediately prior to the arrests made in these cases?

A. I believe I said to the best of my knowledge.

The Court: He said some of them were not served but he couldn't tell who they were.

The Witness: According to this picture quite a few people were served. In fact, they all seemed to be served.

Deputy Solicitor Smith: That's all.

Redirect examination.

By Attorney Pollak:

Q. Rev. Coffin, if I may clarify an issue relevant to which I do not understand—

Deputy Solicitor Smith: Well, we object to him making a speech, if the Court please. You will just ask the questions, the Court will determine the relevancy in this case.

By Attorney Pollak:

Q. Rev. Coffin, when you said it was your impression that some—strike that—I believe it was your testimony you thought that the N.A.A.C.P. was bearing some of the legal expenses?

A. That is correct.

Q. So the Record will be clear on this, your reference, I take it, was to the N.A.A.C.P. legal department?

A. Legal defense department; that's right.

Deputy Solicitor Smith: I will withdraw my objection, if the Court please.

By Attorney Pollak:

Q. Well, as to the N.A.A.C.P. legal defense fund, Rev. Coffin, do you know whether the Southern Christian Leadership Conference is also paying a portion of the legal expense in these proceedings?

A. No, I don't know.

[fol. 205] Q. You don't know?

A. No.

Attorney Pollak: I have no further questions.

HENRY GRAHAM, having been duly sworn, was examined and testified as follows:

Direct examination.

By Attorney Pollak:

Q. General Graham, I take it you probably recall the events of May 25, 1961, when these defendants were arrested. You were present, were you not, when they were arrested, sir?

A. Yes, I was present and I do recall the events, yes.

Q. General Graham, shortly subsequent to these arrests did you have occasion to make any public comment on the arrests?

A. Before the arrests or after?

Q. After the arrests.

Deputy Solicitor Riggs: Now, we object to that, if the Court please. That is not relevant to the case.

The Court: Sustain your objection if after the arrests were made.

Attorney Pollak: The comments, if the Court please, as we will show, serve—

The Court: You see, this is your witness. You cannot impeach your own witness, if that is what you intend to do as to any comment he made afterwards. As to any comment he made before that has anything to do with the arrests is perfectly all right. You made him your witness.

Attorney Pollak: I understand that, Your Honor. I wasn't seeking to impeach him at all, as I have no doubt he will testify truthfully. My purpose is to elicit from him those statements which I think characterize why, to the extent he did, he ordered the arrests of these defendants. And this is a crucial point—

The Court: Well, what statement he made after. He is [fol. 206] on the Stand, you can ask him if he is the one who did it. But what statement he made afterwards would not be admissible.

Attorney Pollak: You now say, Your Honor, I may ask him if he made such statements?

The Court: Not whether he made those statements, but you can go into any statements he made to his men prior to that time.

By Attorney Pollak:

Q. General Graham, on Wednesday, May 24th, you were in charge of the military situation in Montgomery, were you not?

A. I was.

Q. And on that day under your orders, am I right, that two bus loads of passengers left Montgomery for Jackson, Mississippi?

A. Well, not under my orders did they leave. They elected to leave themselves. We provided military escort for the buses to the Mississippi State line.

Q. They went down in military convoy from the Trailways Bus Station in Montgomery?

A. Yes, that's correct.

Q. Now, is it true that those passengers before boarding their buses ate in racially mixed groups at the Trailways Bus Counter in Montgomery?

Deputy Solicitor Riggs: We object unless the General was present and saw it.

The Court: Well, if he knows it I will let him answer. If he doesn't, he can say.

The Witness: I read about it in the paper. I actually was not in the inside of the bus station at that particular time, and I accompanied the first bus load. Someone else went with the second load.

By Attorney Pollak:

Q. Was anybody arrested pursuant to your orders or otherwise for eating in a mixed group at the Trailways Bus Counter on May 24th?

A. Is this Wednesday?

Q. Yes.

A. No. Let me phrase that in this extent. No one was arrested period.

Q. No one was arrested period. None of these travelers, [fol. 207] indeed was arrested until May 25; is that correct?

A. This was the following day?

Q. Yes.

A. That is correct, yes.

Q. And you traveled by convoy with the group on the 24th to Mississippi?

A. Yes.

Q. And when did you first hear, General Graham, that these defendants, those of these defendants who came to Montgomery from Atlanta, when did you first hear of their arrival in Montgomery, do you recall?

A. I first heard that they were on their way at the Mississippi line.

Q. At the Mississippi line?

A. Yes.

Q. What did you do following receipt of that information?

A. Well, I turned our military party back to Montgomery rather rapidly.

Q. And you reached Montgomery when, at the same time that these seven travelers reached Montgomery from Atlanta?

A. Part of our force did. I personally did not. About fifteen minutes after they had arrived and departed I reached here myself.

Q. Now, on the following morning, Thursday, May 25th, these eleven defendants were brought to the Trailways Bus Terminal under protection of your men; is that right, General?

A. That's right.

Q. And what was your understanding as to the plans of these defendants?

A. Well, all, I knew was that they were coming to the bus station to continue—

Deputy Solicitor Smith: We object to what his understanding was, if the Court please.

The Court: Well, he started off testifying and said what he knew. Go ahead.

The Witness: The best I recall, the understanding was that they were going to Jackson, Mississippi. Just how I came to that understanding I cannot tell you.

By Attorney Pollak:

Q. You were present, were you not, General Graham, in [fol. 208] the Trailways Bus Terminal when these defendants were arrested?

A. Yes, I was.

Q. Is it not a fact, General, these defendants were arrested because you had become angry at them?

A. No, I don't say that they were arrested because I became angry. I confess that angry I had become, but they were not arrested for that reason.

Q. Your testimony is that they were not arrested for that reason?

A. Because I was angry. They were not arrested because I was angry. They were arrested for another reason.

Q. Up to that moment is your testimony nobody had been arrested?

A. In Montgomery, no, no one had been arrested to the best of my knowledge.

Q. General Graham—

Deputy Solicitor Smith: We object to his attempting to impeach his own witness.

The Court: Yes.

Attorney Pollak: If Your Honor please, I would like to refresh General Graham's recollection.

Deputy Solicitor Riggs: If the Court please, there has been no showing that he needs to have his recollection refreshed.

The Court: Well, I will let him examine the testimony and see if it refreshes his recollection. That is all right. But he cannot impeach his own witness. If his recollection is not refreshed, that ends it.

By Attorney Pollak:

Q. General Graham, do you recall the time when you were on the Stand in a Federal Court proceeding?

Deputy Solicitor Smith: We object to reading it into the Record. Just show him, Mr. Pollak, and see if it refreshes his recollection. If it does, then you can ask him. We object to this method.

The Court: Yes.

Attorney Pollak: I am trying to help him to identify [fol. 209] what this document is to which we are alluding.

Deputy Solicitor Riggs: Just point it out to him, Mr. Pollak, and let him read it.

By Attorney Pollak:

Q. I ask you, General, to look at the question put to you by Judge Johnson and your answer.

A. Yes.

Q. I wonder as you look at that question and your answer does that refresh your recollection as to whether, indeed, it was exasperation that led you to change your methods of dealing with these defendants?

A. Mr. Pollak, this is Judge Johnson's terms, not mine. He asked me had I become exasperated at the situation and I told him yes, that I had.

Q. I asked you—

The Court: You needn't go any further. You put him on as your witness.

Attorney Pollak: May it please the Court, we had called General Graham, he is our witness.

The Court: I will let you refresh his recollection. He says that doesn't refresh his recollection, the only thing he knows of is Judge Johnson, who is the one who put that in his mouth and not him.

By Attorney Pollak:

Q. General Graham, if you will re-examine the question and answer to which I directed your attention, do those not indicate an affirmative answer?

Deputy Solicitor Riggs: We object, if the Court please. He is attempting to impeach his own witness.

The Court: You can't impeach your own witness. You put him on the Stand. You can let him refresh his recollection, let him read it, and if that refreshes his recollection where he can answer.

The Witness: This thing doesn't say anything about arresting anybody. I can read it. I don't mind discussing the situation. What you are trying to say is one thing.

Deputy Solicitor Riggs: General, we don't know what he is trying to say.

[fol. 210] By Attorney Pollak:

Q. Then your answer is, General, that the colloquy beginning on page 287 of this transcript, Civil Action No. 1274-N, does not change your recollection of whether it was anger at these defendants that led to your changing your method and authorizing their arrests?

A. Mr. Pollak, I was provoked, I was irritated, I was also angry, because of the danger that this incident had placed my men and the people in this community in, but it had nothing to do with why they were arrested.

Q. General Graham, why did you change your method?

Deputy Solicitor Riggs: We object to that, if the Court please. There has been no testimony that his method was changed.

By Attorney Pollak:

Q. General Graham, to recapitulate, is it not true that up to this time there had been no arrests of travelers including travelers who had eaten in a racially mixed group in the Trailways Bus Terminal?

A. There had been no arrests.

Q. Is it not true that what we are now trying was from an arrest of the defendants who did eat as a racially mixed group in the Trailways Bus Terminal?

A. That's correct.

Q. I ask you again, what led to your change in the method of handling these?

Deputy Solicitor Riggs: We object to the form of the question.

Deputy Solicitor Smith: It pre-supposes he changed his method, and the witness has denied he did.

The Court: Sustain your objection.

Attorney Pollak: I didn't hear your ruling.

The Court: The way you phrased your question, I sustain the objection. I will let you ask him why he had them arrested.

By Attorney Pollak:

Q. General, why did you not order the arrest of the first travelers who ate as a racially mixed group at the Trailways Bus Terminal?

[fol. 211] A. To begin with, I didn't see them do so. That is, personally.

Q. If you had been there would you have ordered their arrest?

A. Perhaps so and perhaps not, but I think it would depend on the situation at that time.

Q. Did you order the arrest of these defendants on May 25th?

A. Yes, as the military commander here at that time I did.

Q. You signaled to Colonel Poarch and he in turn signaled to Sheriff Butler?

A. Yes.

Q. Yes.

A. Yes.

Q. So it is your testimony today that you gave the order to arrest these defendants?

A. In substance that's correct.

Q. What was it, general, that led you to conclude that these defendants should be arrested?

A. Well, it was the act of sitting together as a group contrary to the custom, long established custom here in this community under the circumstances.

Q. What custom had you in mind, General Graham?

A. White people eat one place and colored eat another, which is a long established custom pretty well recognized by both parties here in Montgomery.

Q. And it was the violation by these defendants of that custom?

A. Under these circumstances.

Q. You had warned the defendants not to sit down together at the counter?

A. No, I had not.

Q. You had instructed one of your men to do it?

A. I did not, no.

Q. You did not instruct any?

A. I did not instruct anyone.

Q. Do you know whether any of your subordinates had instructed or warned the defendants?

A. I do not.

[fol. 212] Q. To your knowledge no one, in short, told these defendants the acts which the day before had overlooked would today be prohibited?

A. I don't know that anyone so instructed these defendants. They were aware of the customs in this community I assume.

Q. General Graham, you have testified to your exasperation. After you arrested these defendants were you happy?

Deputy Solicitor Riggs: If the Court please, we object to that. His emotional state had nothing to do with it.

Attorney Pollak: His emotional state, if the Court please, has everything to do with it. What the General has been addressing himself to, according to his testimony, is that the circumstances of this arrest. I think the showing which we are prepared to make, which has indeed already been made by the General's testimony under other circumstances of his actual state of exasperation and of happiness when he had apprehended these defendants, goes, I would say, totally undercuts any showing that the State of Alabama seems to be attempting to make of a balanced determination of the necessity of the situation dispassionately observed—

The Court: I will let him answer the question. Go ahead and ask him.

By Attorney Pollak:

Q. The question, General, was whether you were happy after the arrest of these defendants.

A. I made that statement. But you say that I was happy, Mr. Pollak, really doesn't describe the situation at all. This whole situation has been a very sad one. I made such a statement and I admit it.

Q. Did you—

Deputy Solicitor Smith: I ask counsel not to interrupt the witness. You have asked the question and let him answer it.

Attorney Pollak: I have asked a question to which the answer is relatively short.

Deputy Solicitor Riggs: Your Honor, we ask that the witness be given full opportunity to answer the question.

The Court: All right. I think he has answered it.

[fol. 213] By Attorney Pollak:

Q. All right. Did you state, general, that the defendants wanted to be arrested?

Deputy Solicitor Riggs: We object to that, if the Court please, any statements made after the arrest.

The Court: Sustain your objection.

Attorney Pollak: If the Court please, since Your Honor has excluded the question—

The Court: I have excluded the question as to what he said after it happened. What he said beforehand you are perfectly at liberty to ask him. But he is your witness.

Attorney Pollak: Your Honor, he is our witness in the sense we called him.

The Court: You are not allowed the same latitude with your own witness as you are on cross examination.

Attorney Pollak: I beg your pardon, Your Honor.

The Court: You are not allowed the same latitude on your own witness as you are on cross examination, because in that way you are trying to impeach him indirectly.

Attorney Pollak: If I am not mistaken, Your Honor, under the Code of this State the trial Court has authority to permit counsel to treat a witness called by him as, in effect, an adverse witness.

The Court: Let me correct you. You never called him as a hostile witness. If you had called him as a hostile witness and announced to the Court at the time you were calling a hostile witness you wanted wide latitude, that is one question. You never made any such accusation.

Attorney Pollak: Your Honor, the Code provision, if my recollection is correct, indicates that the attorney has the privilege of leading a witness where justice requires. That is the effect of Section 444 of the Code—

The Court: Yes, but you have an intelligent witness, he is just as intelligent as you are, and you are not allowed the same latitude as you have with an ignorant witness. Now, if you had a witness on the Stand who was ignorant, [fol. 214] or a young witness, I would permit you all sort of latitude.

Attorney Pollak: Your Honor, if it is necessary under your practice to formally request the privilege of treating the witness as a hostile witness, then I ask for that privilege now.

The Court: It is too late now.

The Witness: I don't really feel very hostile, Judge. I am trying not to be.

By Attorney Pollak:

Q. You are not very hostile? I hope you understand the characterization the law imposes upon us, and I don't mean this in any sense of indecency, the only sense in which I would term you a hostile witness is the sense which characterizes this entire litigation. This is a law suit, a criminal proceeding, brought by the State of Alabama against these defendants, and you, General, were at the time of the arrest effectively the governing force of the City of Montgomery, so that—

Deputy Solicitor Riggs: If the Court please, we object to Mr. Pollak's speech to General Graham. It has nothing to do with this case.

Attorney Pollak: It does, if Your Honor please, I think it indicates—

The Court: Well, if you will address yourself to me rather than to General Graham I will listen for a while anyway.

Attorney Pollak: I apologize.

The Court: All right.

Attorney Pollak: I submit, Your Honor, that—

The Court: You ask the question and then I will decide whether he can answer it, or not, and we will get along much faster.

Attorney Pollak: Your Honor, I believe the question that I was putting to the General when it began was—

By Attorney Pollak:

Q. Didn't you say, General, that these defendants wanted to be arrested and "we have accommodated them?"

Deputy Solicitor Riggs: Again we object to that.

The Court: Overrule your objection. Go ahead. He [fol. 215] asked you if you said it.

The Witness: Yes, I said that, Your Honor.

By Attorney Pollak:

Q. Did the defendants advise you they wanted to be arrested?

A. No, they did not.

Q. Did you go on to say they had been arrested quietly like they wanted to be "and now I am happy?" "Now, I am happy too?"

Deputy Solicitor Riggs: We object.

The Court: Sustain your objection.

Attorney Pollak: I would offer, Your Honor, an offer of proof to show that if we were allowed to put that question to General Graham he would acknowledge he had said that and, indeed, that he reiterated that statement, that sentiment, as a witness in the Federal proceeding.

The Court: Just leave the Federal proceeding out of this and proceed with the State Court for awhile.

Attorney Pollak: My offer, Your Honor, is General Graham could acknowledge if permitted to answer that—

The Court: Well, the Court is not going to permit him to answer. Let us get that straight. Now, you have a seat and ask another question if you want to, but we are not going any further on that question. I have allowed you all sort of latitude but I can't turn the Court over to you.

By Attorney Pollak:

Q. General Graham, did you subsequent to the arrest of these defendants explain your action in these terms—

Deputy Solicitor Riggs: We object, if the Court please.
The Court: Wait. Let him ask the question.

By Attorney Pollak:

Q. They, referring to the defendants, they deliberately and intentionally used this opportunity to test the laws, the segregation laws of the State?

Deputy Solicitor Riggs: We object.
The Court: Overrule your objection.
[fol. 216] The Witness: I don't recall saying the segregation laws. Did I say that, segregation laws?

By Attorney Pollak:

Q. The word segregation was the interpolation of the reporter?
A. Well, I didn't say segregation.
Q. All right. You said the laws?
A. That's right.
Q. What laws were you referring to?

Deputy Solicitor Riggs: We object.
The Court: Sustain your objection.

By Attorney Pollak:

Q. Was it not your testimony in the Lewis case, General, the laws you had in mind were the practice about which you have testified this afternoon, the segregation customs prevailing in the South?

Deputy Solicitor Riggs: We object.
The Court: Overrule your objection. Now, the lawyers be seated. I don't want to see you all walking around the Court Room.
The Witness: Which is the Lewis case now?

By Attorney Pollak:

Q. The Federal proceeding, the proceeding before Judge Johnson in which you testified.

A. That has me confused. Now, will you state your question over again so I can answer it.

Q. Did you not say in testimony before Judge Johnson that the laws which you said the defendants deliberately violated were those, were in essence the segregation practice prevalent in Montgomery?

Deputy Solicitor Riggs: Is it understood we have the same objection, Your Honor?

The Court: If you object on account of repetition I will sustain your objection because he has asked him that once. He said he didn't say that.

Attorney Pollak: We haven't got an answer yet, Your Honor. I was merely re-phrasing the question for the General.

Deputy Solicitor Riggs: We object.

[fol. 217] By the Court:

Q. If I remember correctly, and I am listening, didn't you say you didn't say segregation, and somebody; or you said, the Court Reporter paraphrased it?

Attorney Pollak: I mean a newspaper reporter, Your Honor.

The Court: Well, whoever it was. I thought you said the Court Reporter.

Attorney Pollak: Having put the question in that form the General then asked me to give him the question again and I was attempting to do it.

The Court: All right.

By Attorney Pollak:

Q. My question is this. Didn't you say in testimony in Federal Court that the laws you had in mind were customs, segregation customs prevailing in Montgomery?

Deputy Solicitor Riggs: We object.

The Court: Overrule your objection.

The Witness: I still say I did not say segregation, I said customs.

By Attorney Pollak:

Q. Did you not say to Judge Johnson that the customs you were referring to are the customs "that the white people eat in one part of the bus terminal and the colored people eat in another?"

Deputy Solicitor Riggs: We object.

The Court: I sustain your objection.

Attorney Pollak: If Your Honor please, I would like to make an offer of proof if allowed.

The Court: You better get Judge Johnson up here. You say you directed it toward Judge Johnson. You better bring him on up here and I will let him testify. If you say in that Court proceeding didn't he say that I would let you ask him, but you said didn't he make it to Judge Johnson.

Attorney Pollak: This is in Court, Your Honor.

[fol. 218] The Court: I know it.

Attorney Pollak: I probably didn't understand what you said.

The Court: You said didn't he make it to Judge Johnson. Don't the Record show there? Why didn't he make it in the Record instead of why bring Judge Johnson in here?

Attorney Pollak: I was only trying to characterize the particular proceeding we were talking about.

By Attorney Pollak:

Q. Did you not—and I will adopt the Judge's word—in Court, in Federal Court, refer to the customs "that the white people eat in one part of the bus terminal and the colored people eat in another, this is a long standing custom for which everyone is fully aware?"

Deputy Solicitor Riggs: We object.

The Court: Overrule your objection. Go ahead and answer.

The Witness: Yes, I said that.

Attorney Pollak: We have no further questions.

Cross examination.

By Deputy Solicitor Smith:

Q. Colonel Graham, when did you first know that this group of defendants had planned to depart from the home of Rev. Abernathy in route to the Trailways Bus Terminal on May 25?

A. I suppose sometime in the morning. I am trying to remember.

Q. Do you recall how you were informed?

A. Someone called. We had a group guarding Rev. Abernathy's home. We had an officer in charge of that detail. And they told him, I believe, when they were leaving.

Q. I will ask you whether or not Colonel Ralph Poarch was assigned to this detail? That is, this detail to escort the group to the Trailways Bus Terminal?

A. I don't recall who was in charge.

Q. General Graham, did you personally go to Rev. Abernathy's home preceding their departure from Rev. Aber-
[fol. 219] nathy's home to the Trailways Bus Terminal?

A. I don't recall. I mean, I visited in that area several times each day and night.

Q. This would be on the morning preceding their arrests May 25?

A. Did I go to their house that morning before their arrest?

Q. Yes, sir.

A. I don't recall. I don't think so.

Q. Now, when did you first see these defendants on this day in question, General Graham?

A. When they arrived.

Q. Were you at the Trailways Bus Terminal when they arrived?

A. Yes.

Q. And were they escorted by military personnel on arrival?

A. Yes.

Q. Did you go immediately to the interior of the building?

A. I don't recall. My concern was for the entire area, the outside, inside, the garage part and so forth.

Q. Had you made a surveillance of the outside of the building?

A. Yes, very much so.

Q. Will you describe what you saw outside the building immediately prior to their arrest—immediately prior to their arrival?

A. Immediately prior to their arrival?

Q. Yes, sir.

A. Well, the general situation you would expect there.

Q. Did you have military personnel stationed outside the building?

A. We had, yes.

Q. Did it more or less surround the building?

A. It did.

Q. How many military personnel would you estimate there at that time, General Graham?

A. There were several hundred.

Q. Several hundred?

A. Yes.

Q. Did you have military personnel stationed inside the bus terminal, General?

[fol. 220] A. Inside the terminal.

Q. How many would you estimate had been inside the building?

A. Well, in the garage and in the terminal itself I would say about ten or fifteen.

Q. Were there other law enforcement officers present in the terminal?

A. There were.

Q. What other officers were present in the terminal?

A. Well, the Sheriff had several of his deputies.

Q. Were United States Marshals present at this time?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No, sir. If they were there I didn't know it.

Q. General Graham, why did you order these defendants arrested?

A. For a breach of peace.

Q. And why did you consider their actions at the time to have been a breach of the peace?

A. Well, it would be the circumstances, I believe, that had gone on the days before, and the assembly outside, the people. We were in a position to have completely blocked off the bus terminal if we felt that was necessary. We were attempting to conduct ourselves with the least amount of interruption of normal life here in Montgomery. And yet we were charged with seeing to it that no one was hurt. And to do both sometimes it is rather difficult. So as people began to gather in this general area we didn't block the entire area out, which we could have. Perhaps in looking back in retrospect it might have been the proper thing to have done. But there was a large gathering of people as the morning proceeded in a very short period of time, gathering across the street mostly, although some did move up and down on the terminal side of the street. Now, I am not sure exactly what your question was. I believe you asked me why.

Q. Yes.

A. Did I consider it a breach of the peace. Was that your question?

Q. That was the question.

A. Well, this act of sitting together at this lunch counter [fol. 221] under these circumstances could have inflamed the crowd which was there, and we already had enough of that, and it seemed to me that the circumstances warranted an arrest and I so directed Colonel Poarch, who was acting as my legal advisor, to have it accomplished.

Q. Now, General Graham, were you present at Rev. Abernathy's church on the evening of Sunday, May 21?

A. From 10 o'clock on that evening, yes.

Q. Will you describe the condition that existed there on that evening, which would have been the Sunday evening preceding the arrest of these defendants on Thursday?

A. Well, most of the action, which everyone is so aware of had already happened, but was a great amount of tension in the area at that time and was a very confusing situation, and one of considerable concern to me.

Q. I will ask you whether or not at that time at Rev.

Abernathy's church an automobile was overturned and burned?

Attorney Pollak: Your Honor, I have a general objection, and the case is taking so long I am sure we all want it to come to a close, but I do think the prosecutor is going far beyond the issues we are trying.

The Court: If you will object to it I will sustain your objection.

Attorney Gray: We do object.

The Court: All right. Objection sustained.

Deputy Solicitor Smith: We have no further questions. One minute.

Recross examination.

By Deputy Solicitor Smith:

Q. General Graham, I will ask you this question. At the time these defendants were arrested would you have ordered an arrest made had there not been a crowd inside and outside the building which you considered to be hostile?

A. I think not.

Deputy Solicitor Smith: No further questions.

[fol. 221a] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 222] Donald F. Martin, having been duly sworn, was examined and testified as follows:

Direct examination.

By Attorney Gray:

Q. State your name, please, sir.

A. Donald F. Martin.

Q. What is your occupation?

A. State News Manager for United Press International.

Q. Is your office locally here in Montgomery?

A. My office is in Montgomery, so is my residence.

Q. In your official capacity did you have occasion to cover the first Freedom Riders that left Montgomery on Wednesday, the 24th of May?

A. I did.

Q. Will you tell the Court what they did when they entered the bus terminal the best you recall?

A. They arrived by an escort of National Guards, they entered the rear of the terminal, they immediately purchased bus tickets, and then they went to the lunch counter, sat down and ordered coffee.

Q. Will you tell us whether or not it was a racially mixed group?

A. It was a racially mixed group.

Q. And which of the bus terminal waiting rooms and lunch counters did they use, the white waiting room or the colored waiting room?

A. Reportedly all white waiting room at the Trailways Bus Terminal on Lee Street.

Q. Were any arrests made?

A. There were no arrests made.

Q. After they had whatever they ordered what happened then?

A. The bus was late in arriving, the one to take them to Jackson, Mississippi, and when the bus did arrive the group joined by newsmen went out to the rear of the terminal and after, oh, a minute to five minutes delay because the seating capacity of the bus was already on the bus when it arrived in Montgomery, the group boarded along with newsmen.

Q. Approximately how long were these persons in the bus terminal from the time they arrived until the bus finally left?

[fol. 223] A. My recollection is they stayed there from thirty to forty-five minutes. That is from the time they entered the waiting room until they boarded the bus.

Q. Now, did any incident at all occur inside the terminal?

A. I did not see any.

Q. Did you have occasion to go outside of the terminal to observe the crowd?

A. Yes, I did.

Q. Will you tell the Court approximately how many persons were outside of the terminal on this Wednesday at the time the first group of Freedom Riders left?

A. I would like to qualify my answer by saying that is somewhat difficult to estimate the crowd because they were not gathered in one spot, they were on various corners on these streets surrounding the bus station. My best estimate would be between 250 and 350 people.

Q. And in spite of those persons outside, these persons were permitted to use the facilities of the bus terminal and subsequently catch the bus and leave?

A. That is correct.

Q. Did you have an occasion to look in and out of the windows at the bus terminal at the Trailways?

A. Yes, I did.

Q. A person on the outside of that window, say, across the street, would he be able to look into the window and see anyone, and be able to discern their race sitting at a lunch counter?

A. In my opinion he would not.

Q. Why would they not?

A. Because National Guard troops were out in considerable numbers lined up on both sides of the street, the window was blocked by the troops standing there almost elbow to elbow, there was a great deal of National Guard vehicles as well as local law enforcement vehicles in the street in front preparing to escort the bus to the Mississippi line. Also their view would be hindered by—

The Court: Just a minute.

Attorney Gray: Your Honor, I object—

[fol. 224] The Court: No. Go ahead and ask him the question.

By Attorney Gray:

Q. Would there be any other obstruction to their view?

A. The venetian blinds would have also obstructed their view.

Q. And were those venetian blinds open or closed on that day, if you recall?

A. I do not recall.
Q. But they are venetian blinds?
A. Yes, they are.

Attorney Gray: That's all.

Cross examination.

By Deputy Solicitor Smith:

Q. Mr. Martin, were you present on May 25, on Thursday I believe, at the time these defendants were arrested?
A. No, sir, I was not.
Q. Do you know what the condition of the venetian blinds was at the terminal?
A. No, sir, I do not.
Q. On the day these defendants were arrested?
A. I do not, sir.
Q. Do you know whether a person walking in front of the bus terminal at the time of their arrest could have seen inside and seen they had seated themselves at the lunch counter?
A. On this particular day you are talking about I wasn't even in the State so I couldn't give you any idea whether they could be seen.
Q. Do you know anything about the condition of the bus terminal at the time of the arrest?

The Court: He said he wasn't even in the State of Alabama.

By Deputy Solicitor Smith:

Q. Is that correct?
A. That's correct.
Q. Now, were you at the Greyhound Terminal on Saturday, May 20, when the first Freedom Riders arrived there?
[fol. 225] A. Yes, sir, I was.
Q. Was there any eruption from violence at that time?
A. Yes, sir, there was.
Q. Any persons hurt?
A. Yes, several.
Q. Any property destroyed?

A. Yes.

Q. Were you at Rev. Abernathy's church on Sunday evening, May 21?

A. Yes, I was.

Q. I will ask you whether or not on that evening you were actually struck on the back of your head with a bottle?

A. That's correct.

Q. Is that correct?

A. Yes, sir.

Deputy Solicitor Smith: That's all.

Attorney Gray: The defense rests.

[fol. 226]

CLERK'S NOTE RE DEFENDANTS' EXHIBIT 1

(FRONT PAGE OF ALABAMA JOURNAL DATED WEDNESDAY, MAY 24, 1961, ATTACHED TO ORIGINAL ONLY.)

[fol. 227] Attorney Gray: We would like to file at this time, Your Honor, a motion to exclude we filed earlier in each case.

The Court: All right. The Court will deny your motion, and I am going to adjourn Court until 9 o'clock in the morning for argument.

Attorney Gray: Your Honor, we are willing to waive argument.

Deputy Solicitor Riggs: We will waive argument.

Attorney Gray: We will too, unless the Court wants to hear argument.

The Court: No, if you want to do that.

TESTIMONY CLOSED

The Court: The Court is of the opinion that each of the defendants is guilty of breach of the peace, that each of them is equally guilty, and each of them is sentenced to thirty days hard labor, and also fined $100.

Attorney Gray: We file notice of appeal.

The Court: Yes. Each gives notice of appeal, and I will wait until the bonds are made out before I go home to let them make bonds.

Attorney Pollak: Thank you, Your Honor.

The Court: I will set the bonds at $750.

Deputy Solicitor Riggs: If it please Your Honor, we also have a count of unlawful assembly, and that is the only charge against Wyatt Tee Walker.

The Court: Well, he is just as guilty as the rest of them.

Attorney Pollak: Your Honor, I have been informed, I don't know whether I am right or not, but I have been informed that under your practice the defendants are entitled to speak before sentence.

The Court: Entitled to what?

[fol. 228] Attorney Pollak: To speak before sentence.

The Court: Not when they are convicted of a misdemeanor.

Notice of appeal is given and bond in each case is set at $750. Breach of the peace as to all the defendants except Walker, and unlawful assembly in Walker's case.

Let each of the eleven defendants come around. Except as to costs, the same as to each of you except Rev. Abernathy, and according to the Clerk his costs are a little bit more.

Each of you are sentenced to thirty days at hard labor for the sentence, for Montgomery County, and eighty days for the costs.

The Clerk: Eighty days for the costs of all of them except Abernathy, and it is one hundred and thirty-three days on him.

The Court: Well, how about the fine?

The Clerk: How much is the fine?

The Court: $100 fine.

The Clerk: That is thirty days for the fine.

The Court: And how many days for the costs?

The Clerk: Thirty days fine for each one of them, and eighty days for the costs on each one of them with the exception of Abernathy, and his is thirty days for the fine and one hundred and thirty-three days for the costs.

SENTENCE

The Court: Each of you are sentenced to thirty days at hard labor for Montgomery County for the sentence, thirty additional days for the fine, eighty additional days for the costs, with the exception of Rev. Abernathy, and his is one hundred and thirty-three days additional because he had more witneses. At least, they were charged to him.

The bond in each case is $750.

[fol. 474] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 475]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 101

RALPH D. ABERNATHY,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there

is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 476]

IN THE COURT OF APPEALS OF ALABAMA

3 Div. 101

RALPH D. ABERNATHY,

v.

STATE.

Appeal from Montgomery Circuit Court

OPINION—October 23, 1962

PRICE, Presiding Judge:

The appellant and ten other persons were convicted in the court of common pleas of Montgomery County. In the circuit court, by agreement, the cases were considered as being tried separately, but evidence was introduced only [fol. 477] in the Abernathy case and was considered as introduced in all the cases. There was a separate judgment of conviction as to each defendant.

On appeal to this court it is stipulated that the transcript of the testimony be copied into the record in this case only, and be considered a part of the record in each of the other cases, without the necessity of copying it into the record of each of said cases.

The statutes under which the defendant was charged provide:

> "Title 14, Sec. 407: If two or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall, on conviction, be punished at the discretion of the jury, by fine and

imprisonment in the county jail, or hard labor for the county for not more than six months."

"Title 14, Section 119(1): Any person who disturbs the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred ($500.00) or be sentenced to hard labor for the county for not more than twelve (12) months, or both, in the discretion of the court."

The evidence shows the eleven appellants involved in these appeals are four white men and seven Negroes. On May 24, 1961, the City of Montgomery was under martial law as the result of riots following the arrival at the Greyhound Bus Station on Saturday, May 20th, of three groups of so-called "Freedom Riders." A race riot occurred on Sunday night in the vicinity of the church of which the appellant Abernathy was the pastor, in which riot several thousand persons participated. Some of these appellants, including Abernathy, were at the church during the riot. The racial situation in the city was extremely tense. Some fourteen hundred national guardsmen were on duty. The streets were being patrolled by armed convoys.

[fol. 478] The first groups of Freedom Riders had been given a police escort to the Mississippi state line on the morning of the day this additional group, composed of seven of these appellants, arrived at the Greyhound Bus Station. The explosive atmosphere was heightened by their arrival, at a time when it was considered the city had passed its crisis. This group was met at the station by a hostile crowd of some two thousand persons. The crowd was unruly and bricks and stones were hurled at the automobile in which these persons were driven from the bus station.

The next morning a military convoy, under the command of Colonel Poarch of the Alabama National Guard, escorted the appellants from the home of appellant Abernathy to the Trailways Bus Terminal. This escort had been arranged

by General Graham, who had asked appellants to contact his office when they desired to travel. The convoy proceeded directly from Abernathy's house to the bus station. Upon entering the station they went directly to the ticket window and some of them bought tickets to Jackson, Mississippi. From there they went to the lunch counter in the front portion of the room and began to occupy the seats at the counter.

The State's testimony tended to show that at this time some thirty persons were milling around inside the station, eighteen or more besides the appellants and the law enforcement officers; four or five hundred people were outside in the immediate vicinity of the station, and over a hundred law enforcement officers were stationed outside. In the front part of the station there were large plate glass windows and it was possible for the crowd outside to see inside the station; that when the appellants sat down at the [fol. 479] lunch counter an outburst of noise was heard from the crowd outside. At this time Colonel Poarch directed the Sheriff of Montgomery County to arrest the defendants. Colonel Poarch testified he gave the arrest order because the air was electric with excitement and tension; that the crowd outside was hostile to these persons; that there was also a number of people in the station that could have caused trouble or injury, not only to the defendants themselves, but also to innocent passersby or people who had no connection with either side of the trouble, as well as to the National Guardsmen, and it was his opinion the conduct of the defendants under the circumstances was calculated to provoke a breach of the peace.

For the defendants, William S. Coffin, Jr., Chaplain of Yale University, testified he first learned of racial violence in Montgomery from appellant MacGuire on May 21, 1961. As a result of such information and a sermon he had preached, he along with four other appellants, MacGuire, Noyce, Smith and Swift, three of whom are white men and one a Negro decided to come to Montgomery. They flew to Atlanta and were joined there for the bus trip to Montgomery by appellants Carter and Jones, who are Negroes. They spent the night in Montgomery and the seven travelers decided to proceed to Jackson, Mississippi.

Appellants Shuttlesworth, Lee, Abernathy and Walker, Negroes, accompanied them to the bus terminal. They were provided heavy military escort to the terminal. Upon arrival at the station they were ushered into the white waiting room and they went directly to the ticket window and seven of the appellants purchased tickets to Jackson, Mississippi. Shortly after leaving the ticket window they seated themselves at the lunch counter and ordered and were served coffee. At this point they were placed under arrest by the sheriff. They were given no warning that they were not to sit at the counter. That it was not possible to see persons [fol. 480] in the lunchroom from outside through the tinted glass windows; that when he left Abernathy's house it was his intention to seek service at the terminal on a racially integrated basis.

Donald Martin, Alabama News Manager, United Press International, testified that on the day previous to appellant's arrest a racially mixed group used the facilities of the white waiting room at the Trailways Bus Terminal. There were no incidents and they were not arrested. At that time there was a crowd of approximately two hundred fifty to three hundred fifty persons on streets surrounding the bus terminal; that it was not possible to discern the race of persons at the lunch counter when looking through the glass from outside; that he was not in the terminal on the day appellants were arrested.

General Henry Graham, Adjutant General of Alabama, was called as a witness by the defendants. He testified he was present when the defendants were arrested. He was asked if he had occasion to make public comment on the arrests shortly after they were made. The court sustained the State's objection to any statement he may have made after the arrest, on the ground the defendant could not be allowed to impeach his own witness.

The witness testified that on May 24th, he was in charge of the military situation in Montgomery; that on that day two bus loads of passengers elected to leave for Jackson, Mississippi, and military escort was provided for the buses to the Mississippi State line; that he read in the newspapers that the passengers ate in racially mixed groups at the lunch counter before boarding their buses, but that he was not in

the bus station at the time and he accompanied the first bus load; that no traveler had been arrested until these defen- [fol. 481] dants were arrested; that he first heard these defendants were enroute to Montgomery from Atlanta when he was at the Mississippi line and he turned the military party back to Montgomery rather rapidly and some of the force reached Montgomery at the same time these seven travelers arrived there from Atlanta; that he was present in the bus terminal the next morning when these defendants were arrested; that he was provoked, was irritated and was angry because of the danger in which this incident had placed his men and the people of the community, but they were not arrested because he was angry, and it was not anger that led to his changing his method of dealing with the Freedom Riders; that whether he would have ordered the arrest of the first travelers who ate as a racially mixed group if he had been present would have depended upon the situation at that particular time; that he had made the statement that these defendants wanted to be arrested and "we have accommodated them."

The prosecutions were begun in the Common Pleas Court by affidavit. The affidavit charged that this defendant, on or about May 25, 1961, "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count II

"Ralph D. Abernathy did meet with two or more persons [fol. 482] to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama."

In the circuit court Count I of the complaint filed by the solicitor charged that defendant, "did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel; * * * ."

Count II of said complaint charged that defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons on Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel * * * ."

The defendant filed a motion to quash the affidavit, warrant and complaint on the grounds that by the issuance of the affidavit and complaint the defendant was denied the rights guaranteed to him by the Fourteenth Amendment to [fol. 483] the Constitution of the United States, and Article 1 Section 6 of the Constitution of Alabama 1901, in that he was deprived of freedom of speech, religion, travel and association; his arrest was designed to perpetrate racial segregation and was thus a denial of equal protection of law and that the charges against him were so vague as to amount to a denial of due process of law. The defendant further alleged that he was deprived of the right of unsegregated use of travel facilities guaranteed by the Interstate Commerce Act (part II, Sec. 216 (d), Title 49, U.S.C.A., Sec. 316 (d) and that an imposition of racial segrega-

tion on interstate travelers is an undue burden on interstate commerce in violation of Article I, pp 8 of the Constitution of the United States. The court overruled the motion to quash.

The defendant then interposed a demurrer to the affidavit, warrant and complaint. The demurrer raised all the objections made under the motion to quash and further averred that the allegations of the affidavit, warrant and complaint, and the statutes upon which they are based, are so vague, indefinite and uncertain as not to apprise the defendant of the nature and cause of the accusation against him; that no offense is alleged; that the complaint was drawn in the alternative and that there was a fatal variance between the affidavit and complaint. The demurrer was overruled.

After the presentation of the state's case, and before putting on his defense, the defendant moved to exclude the state's evidence on the grounds that to convict him under the evidence adduced would deprive him of his constitutional rights of due process of law. The motion to exclude was denied.

Sections 232 and 236 of Title 15, Code of Alabama 1940, provide:

> [fol. 484] "232. The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction to pronounce the proper judgment; * * *."
>
> "236. Where a statute creating or defining an offense uses special or particular terms, an indictment on it may use the general term which, in common language, embraces the general term."

In *Nailer* v. *State*, 18 Ala. App. 127, 90 So. 131, the court said:

> "This complaint when filed becomes the charge against the defendant, based, of course, upon the original affidavit. * * * The plea or demurrer of defendant is to

the complaint as filed by the solicitor, and not to the original affidavit, unless the original affidavit is void and charges no offense, in which event the motion should be to quash."

The solicitor's complaint was framed in the language of Sections 119(1) and 407 of Title 14, Code, the statutes which define the offenses, and specifies the particular conduct alleged as constituting the offense with sufficient clearness to apprise the defendant of the charge against him and to enable the court to pronounce the proper judgment. See *Mitchell* v. *State*, Ala. App.—130 So. 2d 198.

We are of the opinion the affidavit here was not void, but that it was sufficient to authorize the issuance of the warrant and furnished sufficient foundation for a prosecution to conviction upon the solicitor's complaint. *Miles* v. *State*, 94 Ala. 106, 11 So. 403.

It is provided by Section 247, Title 15, Code 1940 that, "when the offense may be committed by different means * * * such means * * * may be alleged in the same count in the alternative."

[fol. 485] We find no merit in the defendant's contention that there was a fatal variance between the affidavit and the complaint in that the affidavit alleged in the alternative that defendant disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace," while the complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace."

We are further of the opinion that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119(1), Title 14, Code, supra do not, either in themselves or as construed and applied to this defendant, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor has he been denied the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

The motion to quash the demurrer, and the motion to exclude the evidence were properly overruled.

There was no error in the court's refusal to allow the defendant to cross-examine General Graham, or in refusing to allow the introduction of a transcript of his testimony in a previous case in another court. A party cannot impeach or discredit his own witness by introducing proof of prior inconsistent statements. *Woods* v. *State*, 38 Ala. App. 582, 90 So. 2d 92; *Ruffin* v. *State*, 30-Ala. App. 344, 6 So. 2d 455; *Duncan* v. *State*, 20 Ala. App. 209, 101 So. 472.

> "An unlawful assembly is an assembly of three or more persons, (Our statute has reduced the minimum [fol. 486] number of participants to two.) who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled, as to cause persons in the neighborhood of such assembly to fear on reasonable grounds that the persons so assembled would commit a breach of the peace or provoke others to do so." *2 Wharton's Criminal Law*, Sec. 853, p 721; *Shields* v. *State*, 184 Wis. 448, 204 N.W. 486, 40 ALR 945; *Aron* v. *Wasau*, 98 Wis. 592, 74 N.W. 354.
>
> "In general terms a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence or tending to provoke or excite others to break the peace." *Shields* v. *State*, supra, 8 Jur. Sec. 3 p 834.

The appellant urges that the evidence was insufficient to support a conviction for the failure of the state to prove criminal intent; to prove that appellant's conduct did in fact provoke or threaten to provoke a breach of the peace; to prove that appellant's conduct was "violent, profane, indecent, offensive or boisterous;" to prove that appellants had knowledge their acts would or might provoke others to a breach of the peace.

No specific intent to breach the peace is essential to a conviction for a breach of the peace. *State* v. *Cantwell*, 126 Conn. 1, 8A 2d 533; *Cantwell* v. *Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213; 128 ALR 1352. Nor is it necessary to constitute the offense of a breach of the peace that the proof show the peace has actually been broken. *People* v. *Kovalchuck*, 68 N.Y.S. 2d 165; *People* v. *Ripke*, 115 N.Y.S. 2d 590.

The solicitor's complaint became the charge in the circuit court. There was no averment that the conduct of appellant was "violent, profane, indecent, offensive, or boisterous," and without such averment proof of such fact was not required.

The question of whether certain conduct constitutes a breach of the peace depends largely upon the facts of each [fol. 487] particular case and the circumstances surrounding the incident. An act which would be lawful in some circumstances may amount to a breach of the peace if done under other circumstances.

The incident occurred during a period of great public excitement. The evidence shows that this defendant was aware of the tenseness of the situation and the temper of the crowd. We think it could not conceivably be said that he did not have knowledge that his conduct was calculated to incite a breach of the peace.

The judgment of the court in an action tried without a jury is entitled to the same weight as the verdict of a jury, and will not be disturbed on appeal unless plainly contrary to the great weight of the evidence. 6 Ala. Dig. Criminal Law 260(11). Under the facts and circumstances adduced we think the question of whether the defendant's conduct was reasonably calculated to provoke a breach of the peace was one for the trier of fact. The evidence was sufficient to sustain the judgment of the trial court.

Affirmed.

[fol. 488] CATES, J. (dissenting)

I must respectfully dissent because, to me, at the trial below, the State did not prove beyond a reasonable doubt that there was a clear and imminent danger of a breach of the peace.

These defendants came to the bus station in protective custody of the militia, i.e., voluntarily escorted for their own safety. To say that as interstate travelers they had a "right" to eat black and white side by side at the bus station lunch counter, may not be a precise statement. Under *Boynton* v. *Virginia*, 364 U. S. 454, the federal courts call it "unjust discrimination" not to let them so eat.

Has a State a duty to protect a person in the doing of an act which it may not restrain?

As I read the evidence[1] there was not proof beyond a reasonable doubt that *the sitting down at the lunch counter* caused the crowd to gather at the bus station. Nor was there any evidence of even so much as an assault (in legal parlance) at a militiaman. See *Ellis* v. *Pratt City*, 113 Ala. 541, 21 So. 206.

Holmes said no one has a right to yell "Fire" in a crowded theatre. I fail to see that what the defendants did here was that reckless. There may have been a lighted match, but was there—beyond a reasonable doubt—an open powder keg?

[fol. 489]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

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[1] I am not unmindful of the various witnesses testifying as to "tension," "electric atmosphere" and "noise" from the crowd. These to me are subjective expressions under the elements of the offense charged. The evidence shows no overt act manifesting the potentiality of the crowd nor the capability of the militia for force and arms.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—
November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 489a] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 41

EX PARTE RALPH D. ABERNATHY

IN RE: RALPH D. ABERNATHY, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 101, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorney for Appellants: Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama.

Of Counsel: Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;
Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs.

July 25, 1963—Writ Denied: No Opinion.

[fol. 490]

EX PARTE RALPH D. ABERNATHY, Petitioner,

IN RE: RALPH D. ABERNATHY, Appellant,

vs.

STATE OF ALABAMA, Appellee.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Ralph D. Abernathy, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Ralph D. Abernathy was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and uncertain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to

the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and [fol. 491] services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace".

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119(1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119(1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the petitioner has been denied due process of [fol. 492] law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who accompanied him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

[fol. 493] (f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facili-

ties of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution.

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

[fol. 494] Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully Submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for Petitioner.

Fred D. Gray, 34 North Perry St., Montgomery, Ala-

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

Duly sworn to by Fred D. Gray, jurat omitted in printing.

[fol. 495] Certificate of Service (omitted in printing).

[fol. 496]

IN THE SUPREME COURT OF ALABAMA

The Court Met in Special Session Pursuant to Adjournment

Present: All the Justices

ORDER DENYING PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS—July 25, 1963

3 Div. 41 Ex Parte:
Ralph D. Abernathy, Petitioner
(Re: Ralph D. Abernathy vs. State of Alabama)

3 Div. 42 Ex Parte:
Clyde Carter, Petitioner
(Re: Clyde Carter vs. State of Alabama)

3 Div. 43 Ex Parte:
William S. Coffin, Jr., Petitioner
(Re: William S. Coffin, Jr. vs. State of Alabama)

3 Div. 44 Ex Parte:
Joseph Charles Jones, Petitioner
(Re: Joseph Charles Jones vs. State of Alabama)

3 Div. 45 Ex Parte:
Bernard S. Lee, Petitioner
(Re: Bernard S. Lee vs. State of Alabama)

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3 Div. 46 Ex Parte:
John David MaGuire, Petitioner
(Re: John David MaGuire vs. State of Alabama)

3 Div. 47 Ex Parte:
Gaylord B. Noyce, Petitioner
(Re: Gaylord B. Noyce vs. State of Alabama)

3 Div. 48 Ex Parte:
Fred L. Shuttlesworth, Petitioner
(Re: Fred L. Shuttlesworth vs. State of Alabama)

3 Div. 49 Ex Parte:
George Smith, Petitioner
(Re: George Smith vs. State of Alabama).

3 Div. 50 Ex Parte:
David E. Swift, Petitioner
(Re: David E. Swift vs. State of Alabama)

3 Div. 51 Ex Parte:
Wyatt Tee Walker, Petitioner
(Re: Wyatt Tee Walker vs. State of Alabama)

Montgomery Circuit Court

Come the Petitioners in the above styled causes and the petitions for Writs of Certiorari to the Court of Appeals being submitted on briefs and duly examined and understood by the Court,

It Is Ordered that the Writs of Certiorari be and each is hereby denied and the petitions dismissed at the cost of the petitioners for which costs let execution issue.

No opinions written.

[fol. 497] Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 499]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama, Plaintiff, vs. Clyde L. Carter, Defendant.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

The State of Alabama
Montgomery County

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler, who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one Clyde L. Carter did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace in that he did come to Montgomery, Alabama which was subject to martial rule and did unlawfully and intentionally attempt to test segregation laws and custom by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count 2: Clyde L. Carter did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me this 25 day of May, 1961.

Alex A. Marks, Judge.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting: You are hereby commanded to arrest Clyde L. Carter and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count 1. Disorderly Conduct (T. 14, Sec. 119) (1)

Count 2: Unlawful Assembly (T. 14, Sec. 407) and have you then and there this writ with your return thereon.

Witness my hand this 25 day of May, A.D., 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

[fol. 500]

IN THE COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

No. 22,745

THE STATE,

vs.

CLYDE L. CARTER.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

Charge: Disorderly Conduct & Unlawful Assembly
Witness for State:

Willie B. Painter, Floyd H. Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

5/25/61 Warrant issued and delivered to Sheriff.
5/25/61 Warrant executed by arresting the defendant and committing him to jail (or releasing him on bond)
5/29/61 Bond $1,000.00 approved and filed, Sureties.
9/15/61 Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution, in addition to fifteen (15) days in County Jail.
Bill of Cost.

Clerk's Fees	$2.50
Solicitor's Fees	10.00
Sheriff's Fees	10.00
Library Fee	.50

Also Four (4) Motions as follows:

August 11, 1961 for continuance, "denied".
Sept. 15, 1961.—to quash "denied".
Sept. 15, 1961. Demurrer "denied".
Sept. 15, 1961 to exclude evidence, Denied".

Clerk's Certificate to Transcript (omitted in printing).

[fol. 501]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

STATE OF ALABAMA,

VS.

CLYDE L. CARTER, alias
CLYDE LAROCQUE CARTER.

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor William F. Thetford, and alleges that:

Count 1. Clyde L. Carter, alias Clyde LaRocque Carter, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of

the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel:

Count 2: Clyde L. Carter, alias Clyde LaRocque Carter, whose name is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and County were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit,
State of Alabama.

[File endorsement omitted]

[fol. 503]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was approaching the lunch counter from the ticket window (having just purchased a ticket) in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines, and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McAre. After having purchased his ticket and having started toward the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County, and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119(1) of Title 14 of the Alabama Code) and unlawful Assembly (Section 407, Title 14 of the Alabama Code, which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

"Clyde Carter did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for [fol. 504] his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II. Clyde Carter did meet with two

or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States:

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States.

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Sec. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Sec. 8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers free access to the terminal and other facilities of interstate [fol. 505] carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, Sec. 8) of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit, and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A, and made a part hereof just as if fully set out herein):

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitu-

tion of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof.)

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 So. Union St., Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut, Attorneys for Defendant.

[fol. 506]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 510] [File endorsement omitted]

[fol. 511]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

THE STATE OF ALABAMA,

vs.

CLYDE CARTER.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the warrant, affidavit and complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to

and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6 and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

[fol. 512] 7. If Section 119(1) of Title 14, Code of Alabama, 1940 and/or Title 14, Section 407, Code of Alabama, 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit, and Complaint, deprives defendant of rights, privileges and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d), the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, usage and enforced racial segregation in the use of facilities and services which are an integral part of Inter- [fol. 513] state Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316(d)).

16. For that said allegations in said complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction, it would deprive the defendant the due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affidavit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, [fol. 514] offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119 (1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the [fol. 515] mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful Act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the complaint fails to allege any offense cognizable by this Court.

38. For that the complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d), the Fourteenth Amendment to the Constitution of the United States [fol. 516] and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count L of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "Did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under marital rule, as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II of the Complaint, in that said Count in said affidavit charges that the defendant:

"did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

"did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said City and County were under martial law as a result of the outbreak of racial mob action for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

[fol. 517]

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut;

By: Solomon S. Seay, Jr.

[File endorsement omitted

[fol. 518]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding
Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

CLYDE L. CARTER.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to the ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the Warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

STATE OF ALABAMA,
vs. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 519]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense—Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

CLYDE CARTER.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; and it is is therefore considered and ordered by the Court that the demand for a jury trial be tried by the Court; and it is therefore considered and by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the

State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an addi-
[fol. 520] tional term of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is Therefore considered and ordered by the Court that this sentence be and the same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 521]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

STATE OF ALABAMA,

v.

CLYDE CARTER.

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the defendant in the above styled cause and moves the Court to set aside its finding of the defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the defendant a new trial; and as grounds for said Motion, the defendant sets down and assigns separately and severally the following:

1. The court erred in denying and overruling the defendant's motion to continue the arraignment of the defendant to the same day, date and time of the trial of the defendant on the merits in this cause.

2. The Court erred in denying and overruling the defendants demurrers to the warrant, affidavit and the complaint filed in this cause.

3. The court erred in denying and overruling the defendant's motion to quash the warrant, affidavit and the complaint filed in this cause.

4. The court erred in denying the motion of the defendant to exclude the State's evidence made at the conclusion of the state's evidence.

5. The court erred in sustaining the State's oral motion to strike the exhibits attached to defendant's motion to exclude the State's evidence.

6. The court erred in ruling that the exhibits attached to defendant's motion to exclude the State's evidence were inadmissable.

7. The court erred in denying the motion of the defendant to exclude the State's evidence made at the conclusion of all the evidence.

8. The conviction of the defendant in this case under the evidence introduced was a denial of defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights to the due process of law guaranteed by Article 1, Section VI of the Constitution of Alabama, 1901.

11. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights of due process of law guaranteed by Article 1, Section 13 of the Constitution of Alabama, 1901.

12. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under Article 1, Section 7, of the Constitution of Alabama, 1901.

[fol. 522] 13. The subjection of the defendant to trial on the affidavit and complaint filed in this cause was a denial of the defendant's rights to due process of law under Sections 4, 6 and 7 and 13 of Article 1 of the Constitution of Alabama, 1901.

14. The subjection of the defendant to trial on the affidavit filed in this cause was a denial of the defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The court erred in sustaining objections made by the State to the introduction of evidence offered on behalf of the defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the defendant was based upon a complaint, which said complaint did not allege when the alleged offense was committed.

22. That the conviction of the defendant was based upon a complaint, and for aught that appeared in the complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the defendant committed the offenses with which he is charged, that conviction of the defendant upon the facts proved deprived the defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this [fol. 523] case, is unconstitutional because it deprives the defendant of rights secured by the due process and equal

protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights of free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1) Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality, and;

(c) the statutes fail to give the defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the defendant; (a) without proof that the defendant had any intent to commit a crime; (b) without proof that the defendant had knowledge or scienter (illegible) or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the defendant and the acts or

threatened acts in breach of the peace by persons other than the defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1) Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution [fol. 524] of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the defendant under the evidence in this case:

(a) violated defendant's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded

defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act, Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause, (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an [fol. 525] integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 S Union St., Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 527]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

CLYDE CARTER.

ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 528]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

Stipulation and Agreement Regarding the Record on Appeal—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above-styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 529] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objection to the submission of the above said separate cases to the Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors

into the record of each of said cases and that said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was approaching the lunch [fol. 530] counter from the ticket window (having just purchased a ticket), in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent" R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After having purchased his ticket and having started toward the lunch counter, defendant was approached by Sheriff M. S. Butler, of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit;

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 34 So. McDonough St., Montgomery, Ala.;

Charles S. Conley, 530 So. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, By: Fred D. Gray.

[File endorsement omitted]

[fol. 531] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 532]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 102

CLYDE CARTER,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962
Transcript filed.

May 10, 1962
Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 533]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through His Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for

naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 534] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 42

EX PARTE CLYDE CARTER

IN RE:

CLYDE CARTER, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 102, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants: Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama.

Of Counsel: Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962
Submitted on Briefs

July 25, 1963
Writ Denied, No Opinion

[fol. 535]

Ex Parte Clyde Carter, Petitioner

In Re: Clyde Carter, Appellant,

vs.

State of Alabama, Appellee.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Clyde Carter, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, where Clyde Carter was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to au-

thorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and uncertain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was [fol. 536] contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the *peach* "by conduct calculated to provoke a breach of the peace."

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

Italicized material is underlined typewritten error in original.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First *Ammendment* to the Constitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, *Constition* of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 537] 9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and eminent danger a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could

rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who *accompained* him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law *spring* in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of [fol. 538] the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him *the* the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the *prodedural* protection afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316(d), and imposes an *unconstitutional* burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution.).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court [fol. 539] directed to the Court of Appeals requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully Submitted,

Fred D. Gray, Solomon S. Seay, Jr.

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Av., Montgomery, Alabama.

Of Counsel: Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

Duly sworn to by Fred D. Gray, jurat omitted in printing.

[fol. 540] Certificate of Service (omitted in printing).

[fol. 541] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 543]

CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the record here. Please see side folio 496, p. 254.

[fol. 545]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama vs. William S. Coffin, Jr., Defendant.

IN THE COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

The State of Alabama
Montgomery County

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler, who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961, one William S. Coffin, Jr. did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count II: William S. Coffin, Jr., did meet with two or more persons to commit a breach of the peace or to do an unlawful act.

M. S. Butler.

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks, Judge.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

You are hereby commanded to arrest William S. Coffin, Jr. and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I Disorderly conduct, T14, Sec 119(1); Count II Unlawful Assembly, T14, Sec 407, and have you then and there this writ with your return thereon.

[fol. 546] Witness my hand, this the 25 day of May, A. D., 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

IN THE COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

THE STATE OF ALABAMA, MONTGOMERY COUNTY

No. 22746

THE STATE,

vs.

WILLIAM S. COFFIN, JR.

Charge: Disorderly Conduct and Unlawful Assembly

Witness for State. Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

5-25-61 Warrant issued and delivered to Sheriff.

5-25-61 Warrant executed by arresting the defendant and committing him to jail. (or releasing him on bond)

5-29-61 Bond $1,000.00 approved and filed. Sureties.

9-15-61 Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution in addition to fifteen (15) days in County Jail

Defendant appealed to the present term of the Circuit Court and bond fixed at $.....

Appeal Bond $..... Approved and filed. Sureties

Also Four (4) Motions as follows:

August 11, 1961 for continuance—"denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"denied"
September 15, 1961 to exclude evidence "denied"

Bill of Cost

Clerk's Fees	$ 2.50
Solicitor's fees	10.00
Sheriff's fees	10.00
Library fees	.50

Clerk's Certificate to Transcript (omitted in printing).

[fol. 547]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

(DC and Unlawful Assembly)

No. 187

STATE OF ALABAMA,

vs.

WILLIAM S. COFFIN, JR., alias
WILLIAM SLOAN COFFIN.

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1: William S. Coffin, Jr., alias William Sloan Coffin, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Mont- [fol. 548] gomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: William S. Coffin, Jr., alias William Sloan Coffin, whose name is to affiant otherwise unknown, did meet two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 550]

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

Case No. 187

STATE OF ALABAMA,

vs.

WILLIAM S. COFFIN.

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a White person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others, both the Negro and White races in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "William S. Coffin did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II William S. Coffin did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach [fol. 551] of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant, were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling

throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U. S. C., pp. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, pp. 8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, pp. 8) of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced [fol. 552] racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights,

privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut, Attorneys for Defendant.

[fol. 553]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, p. 9.

[fol. 557] [File endorsement omitted]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Case No. 187

THE STATE OF ALABAMA,

vs.

WILLIAM S. COFFIN.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail [fol. 558] to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the

accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

[fol. 559] 9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and, Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U. S. C. Sec. 316(d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial

pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and [fol. 560] the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite; and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegation of which are vague, indefinite, and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by con-

duct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affidavit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119 (1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the de- [fol. 561] fendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), that no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful Act," but said count fails to allege any facts in support thereof.

[fol. 562] 34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support t hereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant

met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by the Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an

integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Inter-state Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United [fol. 563] States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant;

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

> "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob [fol. 564] action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut;

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 565]

IN CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

WILLIAM S. COFFIN, JR.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—
November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's Warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgements be rendered in each individual case.

[fol. 566]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

WILLIAM S. COFFIN.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the

State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an additional term [fol. 567] of 80 days for the cost incurred in this court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and the same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved and as required by law.

[fol. 568]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Case No. 187

STATE OF ALABAMA,

vs.

WILLIAM S. COFFIN.

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

[fol. 569] 5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

[fol. 570]. 20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of

a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to [fol. 571] what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the Defendant: (a) without proof that the Defendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons;

and (c) without proof that there was any causal relationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (a), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

[fol. 572] (b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied Defendant the right to travel on interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution [fol. 573] of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 575]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

WILLIAM S. COFFIN.

ORDER DENYING MOTION FOR NEW TRIAL—
February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 576]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 194
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor of the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the Court; that defendants, and each of the, have taken separate appeals from the separate judgments of conviction of he Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 577] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objection to the submission of the above said separate cases to the Appellate Court or Courts on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors into the record in each of said cases and that said Assignment of Errors may be considered by the

Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was refiled in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama, vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a white person and a citizen of the United States accompanied by ten others, was arrested in the Trailways Bus terminal in Montgomery; At the time of his arrest, defendant was seated at [fol. 578] the lunch counter in the company of others, both Negro and white races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is sub-leased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands, this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit;

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 So. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 So. Union St., Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendants.

By: Fred D. Gray

[File endorsement omitted]

[fol. 579] Clerk's Certificate to foregoing transcript (omitted in printing).

[Fol. 580]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 103

WILLIAM S. COFFIN, JR.,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962
Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962.

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 581]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 582] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 43

(3 Div. 103, Court of Appeals of Alabama)

EX PARTE WILLIAM S. COFFIN, JR.

IN RE:

WILLIAM S. COFFIN, JR., Appellant,

vs.

STATE OF ALABAMA, Appellee.

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants: Fred Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon Seay, 811 West Jeff Davis Avenue, Montgomery, Alabama.

Of Counsel: Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—
Submitted on Briefs.

July 25, 1963—
Writ Denied: No Opinion.

[fol. 583]

EX PARTE WILLIAM S. COFFIN, JR., Petitioner

IN RE: WILLIAM S. COFFIN, JR., Appellant,

vs.

STATE OF ALABAMA, Appellee.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, William S. Coffin, Jr., hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein William S. Coffin, Jr., was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and uncertain that the petitioner was deprived of due process of law

guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion To Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services [fol. 584] which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace".

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and eminent danger of a breach of the peace;

[fol. 585] and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who accompanied him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law spring in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

[fol. 586] (f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate carriers and to have free access to the terminal and other facilities of interstate carriers and to congregate with

others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316(d)), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

[fol. 587] Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully Submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for Petitioner.

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Avenue, Montgomery, Alabama.

Of Counsel: Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

Duly sworn to by Fred D. Gray, jurat omitted in printing.

[fol. 588] Certificate of Service (omitted in printing).

[fol. 589] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 591]

CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the record here. Please see side folio 496, printed page 254.

[fol. 593]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama, Plaintiff vs. Joseph Charles Jones, Defendant.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

The State of Alabama
Montgomery County

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one Joseph Charles Jones did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come to Montgomery, Alabama which was subject to martial rule and did unlawfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. (T. 14, Sec 119(1) Count 2: Joseph Charles Jones did meet with two or more persons to commit a breach of the peace or to do an unlawful act. (T. 14, Sec. 407), against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks, Judge.

IN COURT OF COMMON PLEAS,
MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting: You are hereby commanded to arrest Joseph Charles Jones and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count 1; disorderly conduct (T. 14, Sec 119(1), Count 2: Unlawful Assembly (T. 14, Sec 407), and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, A. D. 1961.

Alex A. Marks, Judge Court of Common Pleas of Montgomery.

[fol. 594]

IN THE COURT OF COMMON PLEAS,
MONTGOMERY COUNTY, ALABAMA
No. 22,747

THE STATE,
vs.
JOSEPH CHARLES JONES.

Charge: Disorderly Conduct and Unlawful Assembly

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

5/25/61—Warrant issued and delivered to Sheriff.

5/25/61—Warrant executed by arresting the defendant and committing him to jail. (or releasing him on bond)

5/29/61—Bond $1,000.00 approved and filed. Sureties.

9/15/61—Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution in addition to fifteen (15) days in the County Jail.

Also Four (4) Motions as Follows:

August 11, 1961 for continuance—"denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"denied"
September 15, 1961 to exclude evidence "denied".

Bill of Cost	
Clerk's fees	$ 2.50
Solicitor's fees	10.00
Sheriff's fees	10.00
Library fees	.50

CERTIFICATE TO TRANSCRIPT

To the Clerk of the Circuit Court: I hereby certify that the foregoing is a full, complete and exact transcript from my docket of the judgment and proceedings in the above cause, and I herewith send to the Circuit Court all the original and other papers pertaining to the said cause.

Given under my hand this 27 day of September, 1961.

Edith Meyer, Clerk, Court of Common Pleas, Montgomery.

Filed in office this 27 day of September, 1961.

John R. Matthews, Clerk

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 7

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

ALABAMA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

PETITION FOR CERTIORARI FILED OCTOBER 22, 1963
CERTIORARI GRANTED JANUARY 6, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 575

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

ALABAMA.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

vs.

JOSEPH CHARLES JONES.

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1: Joseph Charles Jones, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: Joseph Charles Jones, whose name is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of willfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 598]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

v.

JOSEPH CHARLES JONES.

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated "white". The Bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company; a Delaware corporation, which in turn leases the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section

119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Joseph Charles Jones did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II Joseph Charles Jones did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized [fol. 599] nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denied defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. §316(d)), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, §8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, §8), of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought [fol. 600] against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this War-

rant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 N. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

[fol. 601]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 605] [File endorsement omitted]

[fol. 606]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

THE STATE OF ALABAMA.

STATE OF ALABAMA,

v.

JOSEPH CHARLES JONES.

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8 DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and

immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is [fol. 607] interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and, Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. 316(d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, [fol. 608] custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand

trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite, and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct

calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affi- [fol. 609] davit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 [fol. 610] is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint [fol. 611] that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an in-

tegral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316 (d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations [fol. 612] of Count II of the affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

> "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police

personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 613]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

JOSEPH CHARLES JONES.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—
November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the complaint, warrant and affidavit being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 614]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

JOSEPH CHARLES JONES.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an additional term [fol. 615] of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 616]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

VS.

JOSEPH CHARLES JONES.

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence mad at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights [fol. 617] under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Section 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a [fol. 618] crime or offense on the basis of the facts proved

in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the Defendant: (a) without proof that the Defendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons;

and (c) without proof that there was any causal relationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, [fol. 619] and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the

due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contraven- [fol. 620] tion of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation

of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 622]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

JOSEPH CHARLES JONES.

ORDER DENYING MOTION FOR NEW TRIAL—
February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 623]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,
vs. No. 195.
WYATT TEE WALKER.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the Court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 624] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objection as to the submission of the above said separate cases to the Appellate Court or Courts on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event the defendant in each of the aforesaid cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors into

the record in each of said cases and that said Assignment of Errors may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts, just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At [fol. 625] the time of his arrest, defendant was seated at the lunch counter in the company of others of both Negro and white races in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff

M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit;

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 South McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, By: Fred D. Gray.

[File endorsement omitted]

[fol. 626] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 628]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 104

JOSEPH CHARLES JONES,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 629]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING —November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 630] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 44

Ex Parte JOSEPH CHARLES JONES

IN RE: JOSEPH CHARLES JONES, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 104, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorney for Appellants:

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 631]

Ex Parte JOSEPH CHARLES JONES, Petitioner

In Re: JOSEPH CHARLES JONES, Appellant,

vs.

STATE OF ALABAMA, Appellee.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Joseph Charles Jones, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Joseph Charles Jones was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and un-

certain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of [fol. 632] Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace".

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal

protection of the law guaranteed by the Fourteenth Amend-
[fol. 638] ment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured

by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

[fol. 634] 11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who accompanied him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

[fol. 635] (g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U. S. C., p. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, of in contravention of the commerce clause (Article 1, of the Constitution.

12. The court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the

Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

[fol. 636] Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully Submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama;

Attorneys for Petitioner.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

Duly sworn to by Fred D. Gray, jurat omitted in printing.

[fol. 637] Certificate of Service (omitted in printing).

[fol. 638] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 640] CLERK'S NOTE:

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the records here. Please see side folio 496, printed page 254.

[fol. 642]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama vs. John David Maguire alias John David MacGuire, Defendant.

IN COURT OF COMMON PLEAS

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler who being duly sworn, deposes and says on oath that in said County, on or about May 25, 1961, one John David Maguire alias MacGuire did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count II. John David Maguire, MacGuire, did meet with two or more persons to commit a breach of the peace or.

to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks, Judge

IN COURT OF COMMON PLEAS

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting: You are hereby commanded to arrest John David Maguire alias MacGuire and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I—Disorderly Conduct—T 14, Sec. 119 (1). Count II—Unlawful Assembly—T 14, Sec. 407, and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, 1961.

Alex A. Marks, Judge Court of Common Pleas of Montgomery

[fol. 643]

IN THE COURT OF COMMON PLEAS

MONTGOMERY COUNTY, ALABAMA

No. 22,749

THE STATE,

vs.

JOHN DAVID MAGUIRE.

Charge: Disorderly Conduct and Unlawful Assembly.

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT.

5/25/61—Warrant issued and delivered to Sheriff

5/25/61—Warrant executed by arresting the defendant and committing him to jail (or releasing him on bond)

5/29/61—Bond $1,000.00 approved and filed.

9/15/61—Defendant tried, convicted and fined $100.00 and the cost of the prosecution. In addition to fifteen (15) days in the County Jail

Bill of Cost

Clerk's Fees	$ 2.50
Solicitor's Fees	10.00
Sheriff's fees	10.00
Library fees	.50

Also Four (4) Motions as Follows:

August 11, 1961 for continuance—"denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"Denied"
September 15, 1961 to exclude evidence—"denied"

Clerk's Certificate to Transcript (omitted in printing).

[fol. 644] [File endorsement omitted]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

STATE OF ALABAMA

STATE OF ALABAMA,

vs.

JOHN DAVID MAGUIRE.

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that;

Count 1: John David Maguire, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: John David Maguire did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety

for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[fol. 647]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

STATE OF ALABAMA

STATE OF ALABAMA,

vs.

JOHN MAGUIRE.

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT —Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a white person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter

portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "John Maguire did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II. John Maguire did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or [fol. 648] boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant

and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and Warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., X316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, §8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free

access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, §8) of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful [fol. 649] and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing

of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

[fol. 650] CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 654] [File endorsement omitted]

[fol. 655]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, STATE OF ALABAMA

THE STATE OF ALABAMA,

v.

JOHN MAGUIRE.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require de-

fendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is [fol. 656] interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316 (d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an ulawful and unconstitutional practice, cus-
[fol. 657] tom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite, and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, [fol. 658] offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affidavit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119 (1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section [fol. 659] 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader withont any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful Act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteeenth Amendment to the Constitution of the United States.

40. For that the complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

[fol. 660] 42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Inter-state Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said County in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place [fol. 661] the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did meet with two or more persons to commit a breach of peace or to do an unlawful act:"

Whereas Count II of the Complaint charges that the defendant:

> "Did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut;

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 662]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

JOHN DAVID MAGUIRE.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

STATE OF ALABAMA,
vs. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 663]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

JOHN DAVID MAGUIRE.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an additional term [fol. 664] of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is Therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 665]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

vs.

JOHN MAGUIRE.

MOTION FOR A NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit; November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights [fol. 666] of due process of law guaranteed to Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Section 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this case was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate [fol. 667] Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this

case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the Defendant; (a) without proof that the Defendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of (il-

legible) acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to [fol. 668] classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the

due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act, Title 49, U. S. C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other [fol. 669] facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the defendant, on the basis of the facts proved in this case is an unconstitutional usurpation

of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 So. Union Street, Montgomery, Alabama.

Jack Greenberg, 10 Columbus Circle, New York, 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 671]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

JOHN DAVID MAGUIRE.

ORDER DENYING MOTION FOR NEW TRIAL—
February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 672]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the Court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 673] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objection to the submission of the above said separate cases to the Appellate Court or courts on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors

into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was refiled in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a White person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus terminal in Montgomery. At the time of his arrest, defendant was seated [fol. 674] at the lunch counter in the company of others of both the negro and white races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines; the lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons

of R. E. McRae; After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut;

Attorneys for Defendants.

By: Fred D. Gray.

[File endorsement omitted]

[fol. 675] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 676]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 106

JOHN DAVID MAGUIRE,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 677]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through His Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 678] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 46

EX PARTE JOHN DAVID MAGUIRE

In Re: JOHN DAVID MAGUIRE, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 106, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 679]

Ex Parte JOHN DAVID MAGUIRE, Petitioner

In Re: JOHN DAVID MAGUIRE, Appellant,

vs.

STATE OF ALABAMA, Appellee.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, John David Maguire, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein John David Maguire was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit,

warrant, and complaint are so vague, indefinite, and uncertain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

[fol. 680] 3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace".

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the Con-

stitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

[fol. 681] 8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured by the

Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither [fol. 682] petitioner, nor any of the persons who accompanied him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded

petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facil- [fol. 683] ities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U. S. C., p. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending

a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully Submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

[fol. 684] Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama;

Attorneys for Petitioner.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

Duly sworn to by Fred D. Gray, jurat omitted in printing.

Certificate of Service (omitted in printing).

[fol. 685] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 687] CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the records here. Please see side folio 496, printed page 254.

[fol. 689]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama vs. Gaylord B. Noyce, Defendant.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

The State of Alabama
Montgomery County

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one Gaylord B. Noyce did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery,

Count II. Gaylord B. Noyce did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks, Judge.

IN THE COURT OF COMMON PLEAS,
MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting: You are hereby commanded to arrest Gaylord B. Noyce and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I—Disorderly conduct—T 14, Sec. 119 (1) Count II—Unlawful Assembly—T 14, Sec. 407, and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

[fol. 690]

IN THE COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

No. 22,750

THE STATE,

vs.

GAYLORD B. NOYCE.

Charge: Disorderly Conduct and Unlawful Assembly.

Witness for State. Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

5/25/61 Warrant issued and delivered to Sheriff.

5/25/61 Warrant executed by arresting the defendant and committing him to jail (or releasing him on bond).

5/29/61 Bond $1,000.00 approved and filed. Sureties.

9/15/61 Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution, in addition to fifteen (15) days in the County Jail.

Bill of Cost.

Clerk's Fees	$ 2.50
Solicitor's Fees	10.00
Sheriff's Fees	10.00
Library Fee	.50

Also Four (4) Motions as Follows:

August 11, 1961 for continuance "denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"denied"
September 15, 1961 to exclude evidence "denied"

Clerk's Certificate to transcript (omitted in printing).

[fol. 691]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

STATE OF ALABAMA,

vs.

GAYLORD B. NOYCE, alias GAYLORD BREWSTER NOYCE.

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1: Gaylord B. Noyce, alias Gaylord Brewster Noyce, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: Gaylord B. Noyce, alias Gaylord Brewster Noyce, whose is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police per-

sonnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 694]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

VS.

GAYLORD NOICE.

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a White person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch

counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Gaylord Noice did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II Gaylord Noice did meet with two or more persons to commit a breach of peac r to do an unlawful act."

[fol. 695] That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to

provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances;

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denied defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., §316(d), and imposes an un-

constitutional burden on interstate commerce in violation of Article 1, §8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the [fol. 696] commerce clause (Article 1, §8) of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hear-

ing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

[fol. 697]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of Transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 701] [File endorsement omitted]

[fol. 702]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

THE STATE OF ALABAMA,

vs.

GAYLORD NOICE.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pur-

suant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is [fol. 703] interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint, are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendants as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and, Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use [fol. 704] of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite, and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affi- [fol. 705] davit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did

disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Four-
[fol. 706] teenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant, "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against

him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

[fol. 707] 43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Inter-state Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are

the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

[fol. 708] 51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

> "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut, by Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 709]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding.

Offense: Disorderly Conduct and Unlawful Assembly.

STATE OF ALABAMA,

vs.

GAYLORD B. NOYCE.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT —November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding.

STATE OF ALABAMA,
vs. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL
—November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 710]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

GAYLORD B. NOYCE.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor [fol. 711] for Montgomery County for an additional term of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 712]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

vs.

GAYLORD NOICE.

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article I, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights [fol. 713] under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as [fol. 714] interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other

than the Defendant: (a) without proof that the Defendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship because between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as [fol. 715] interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

[fol. 716] 31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama.

Jack Greenberg, 10 Columbus Circle, New York, 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 718]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

Court Met Pursuant to Adjournment
Present the Honorable Eugene W. Carter, Judge Presiding
Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

GAYLORD B. NOYCE.

ORDER DENYING MOTION FOR NEW TRIAL—
February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 719]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

Stipulation and Agreement Regarding the Record on Appeal—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above-styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 720] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten

cases aforesaid, without the necessity of copying Assignment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Error had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant, herein, a White person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated at [fol. 721] the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated 'white'. The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of

R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, by: Fred D. Gray.

[File endorsement omitted]

[fol. 722] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 723]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 107

GAYLORD B. NOYCE,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 724]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 725] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 47

EX PARTE GAYLORD B. NOYCE.

IN RE:

GAYLORD B. NOYCE, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 107, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred Gray, 34 North Perry Street, Montgomery, Alabama.

Solomon Seay, 811 West Jeff Davis, Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York.

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 726]

EX PARTE GAYLORD B. NOYCE, Petitioner.

IN RE: GAYLORD B. NOYCE, Appellant,

vs.

STATE OF ALABAMA, Appellee.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Gaylord B. Noyce, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Gaylord B. Noyce was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and un-

certain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of [fol. 727] Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace".

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the

equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

[fol. 728] 8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured

by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

[fol. 729] 11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who accompanied him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded

petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

[fol. 730] (g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities on interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

[fol. 731] Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

Duly sworn to by Fred D. Gray, jurat omitted in printing.

[fol. 732] Certificate of Service (omitted in printing).

[fol. 733] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 735]

CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the records here. Please see side folio 496, printed page 254.

[fol. 737]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama, Plaintiff, vs. Fred L. Shuttlesworth, Defendant.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

The State of Alabama
Montgomery County

Before me, the undersigned Judge of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler, who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961, one Fred L. Shuttlesworth did disturb the peace of others by violent, profane, indecent, offensive, or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial law and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count II. Fred L. Shuttlesworth did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me this 25 day of May, 1961.

Alex A. Marks, Judge.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting: You are hereby commanded to arrest Fred L. Shuttlesworth and bring him before the Judge of the Court of

Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I. Disorderly Conduct, (T14, Section 119(1). Count II. Unlawful Assembly, (T14, Section 407). And have you then and there this writ with your return thereon.

Witness my hand this 25 day of May, A. D., 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

[fol. 738]

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

Charge: Disorderly conduct and unlawful assembly.

No. 22,751

THE STATE,

vs.

FRED L. SHUTTLESWORTH.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

The State of Alabama
Montgomery County

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

5/25/61 Warrant issued and delivered to Sheriff.

5/25/61 Warrant executed by arresting the defendant and committing him to jail. (or releasing him on bond)

5/29/61 Bond $1,000.00 approved and filed. Sureties.

9/15/61 Defendant tried, convicted and fined One hundred Dollars and the cost of the prosecution in addition to fifteen (15) days in the County Jail.

Bill of Cost

Clerk's Fees	$ 2.50
Solicitor's fees	10.00
Sheriff's fees —	10.00
Library Fees	.50

Also Four (4) Motions as Follows:

August 11, 1961—For continuance, "denied".
September 15, 1961—to quash "denied".
September 15, 1961—Demurrer "denied".
September 15, 1961—to exclude evidence, Denied.

Clerk's Certificate to Transcript (omitted in printing).

[fol. 739]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH, alias FRED LEE SHUTTLESWORTH.

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1. That Fred L. Shuttlesworth, alias Fred Lee Shuttlesworth, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: Fred L. Shuttlesworth, alias Fred Lee Shuttlesworth, whose name is otherwise unknown to affiant, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 741]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA.

STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT —Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, a Negro, a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and negro patrons of R. E. McRae. After seating himself at the lunch counter with his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly, (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Fred L. Shuttlesworth did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citi-

zens of Montgomery. Count II. Fred L. Shuttlesworth did meet with two or more persons to commit a breach of peace or to do an unlawful act.

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach [fol. 742] of the peace. Neither did defendant nor any persons in his company meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded

defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Sec. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Sec. 8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, Sec. 8) of the Constitution of the United States;

8) it affirmatively appears from the warrant, affidavit and the complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this warrant, affidavit and complaint deprives defendant of rights, [fol. 743] privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the affidavit, warrant and complaint that defendant was arrested as a means of perpetuting an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this warrant and affidavit deprives defendant

of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Ala.;

Charles S. Conley, 530 So. Union St., Montgomery, Ala.;

Jack Greenberg, 10 Columbus Circle, New York 19, N.Y.;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

[fol. 744]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the Record here. Please see side folio 9, printed page 9.

[fol. 748] [File endorsement omitted]

[fol. 749]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

THE STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the affidavit, warrant and complaint in said cause, and separately and severally to each count thereof, and as grounds for said demurrer sets down and assigns separately and severally the following:

1. For that the said affidavit, warrant and complaint fail to allege any offense cognizable by this Court.

2. For that the affidavit, warrant and complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite warrant, affidavit and complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the warrant, affidavit, and complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require de-

fendant to stand trial on an accusation made pursuant to defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the complaint charges a violation of Code of Alabama, 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant and complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him [fol. 750] by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the warrant of arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the warrant, affidavit, and complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

10. For that the warrant, affidavit, and complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper warrant of arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the warrant of arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the warrant, affidavit, and complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this warrant, affidavit and complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the affidavit and warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and controvenes the Commerce Clause thereof and the interstate commerce Act (Title 49 U.S.C. Sec. 316 (d)).

[fol. 751] 16. For that said allegations in said complaint are charged in the alternative and one or more of said alternative does not state an offense under the laws of the State of Alabama.

17. For that said complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said warrant is based upon an Affidavit and the allegations of said affidavit fail to inform the defendant to the specific alternative under the statute which he is called upon to defend.

19. For that said complaint and affidavit are vague, indefinite and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said warrant is based upon an affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said warrant is based upon an affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said warrant of arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said affidavit fails to aver what the violent, profane, indecent,

offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said complaint and affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

[fol. 752] 26. For that Count I of said complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119 (1), but said complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119 (1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which said offenses he allegedly committed.

28. For that said complaint and affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by

conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper warrant of arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the warrant of arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the laws of the State of Alabama.

32. For aught that appears, the warrant is based upon an affidavit, and the allegations of said affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charged that the defendant "did meet with two or more persons to commit a [fol. 753] breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

34. For that Count II of the affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or to do an unlawful act".

36. For that Count II of the complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act".

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the complaint are so vague, indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d)), the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof.

45. For that the allegations in the warrant and affidavit are charged in the alternative and one or more of said al-

[fol. 754] ternatives does not state an offense under the laws of the State of Alabama.

46. For that the warrant and affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the complaint is based upon an affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the affidavit and the allegations of the complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the complaint, in that said count in said affidavit charges that the defendant: "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the complaint charges that the defendant: "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large

number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the affidavit and the allegations of Count II of the complaint, in that said count in said affida it charges that the defendant: "did meet with two or more persons to commit a breach of the peace or to do an unlawful act;"

Whereas Count II of the complaint charges that the defendant: "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law [fol. 755] as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut, By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 756]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the Warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 757]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And

after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the court and it is the judgment of the court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor [fol. 758] for Montgomery County for an additional term of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and the same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 759]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the defendant in the above styled cause and moves the Court to set aside its finding of the defendant guilty and the judgment rendered thereon, to-wit: November 20, 1961, and grant the defendant a new trial; and as grounds for said Motion, the defendant sets down and assigns separately and severally the following:

1. The court erred in denying and overruling the defendant's Motion to Continue the Arraignment of the Defendant to the same day, date and time of the trial of the defendant on the merits in this cause.

2. The court erred in denying and overruling the defendant's Demurrers to the warrant, affidavit and the complaint filed in this cause.

3. The court erred in denying and overruling the defendant's Motion to Quash the warrant, affidavit and the complaint filed in this cause.

4. The Court erred in denying the motion of the defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The court erred in sustaining the State's oral motion to strike the exhibits attached to defendant's motion to exclude the State's evidence.

6. The court erred in ruling that the exhibits attached to defendant's motion to exclude the State's evidence were inadmissible.

7. The court erred in denying the motion of the defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the defendant in this case under the evidence introduced was a denial of defendant's rights under Article 1, Section IV of the Constitution of Alabama, 1901.

9. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights to the due process of law guaranteed by Article 1, Section VI of the Constitution of Alabama, 1901.

11. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights of due process of law guaranteed by Article 1, Section 13 of the Constitution of Alabama, 1901.

12. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under Article 1, Section 7 of the Constitution of Alabama, 1901.

[fol. 760] 13. The subjection of the defendant to trial on the affidavit and complaint filed in this cause was a denial of the defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1 of the Constitution of Alabama, 1901.

14. The subjection of the defendant to trial on the affidavit filed in this cause was a denial of the defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State to the introduction of evidence offered on behalf of the defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the court is contrary to the evidence in the case.

18. The judgment of the court is contrary to the law in the case.

19. The judgment of the court is contrary to the weight of the evidence in the case.

20. The judgment of the court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the defendant was based upon a complaint which said complaint did not allege when the alleged offense was committed.

22. That the conviction of the defendant was based upon a complaint, and for aught that appeared in the complaint, this action was barred by the statute of limitations.

23. That there was a fatal variance between the allegations of the affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the defendant committed the offenses with which he is charged, that conviction of the defendant upon the facts proved deprived the defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this

case, is unconstitutional because it deprives the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution [fol. 761] of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119(1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, indefinite and uncertain that they afford no fair warning to the defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119(1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the defendant: (a) without proof that the defendant had any intent to commit a crime; (b) without proof that the defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship

between the acts of the defendant and the acts or threatened acts in breach of the peace by persons other than the defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and [fol. 762] permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the state, or any agency of the state, under the Fourteenth Amendment.

30. The conviction of the defendant under the evidence in this case:

(a) Violated defendants privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States pursuant to the Fourteenth Amendment to the Constitution of the United States.

(b) violated defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment of the Constitution of the United States;

(e) violated defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) Denied defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the interstate Commerce Act (Title 49, U.S.C. Section 316(d) and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Con- [fol. 763] stitution of the United States and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 So. Union St., Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 765]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

FRED L. SHUTTLESWORTH.

ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 766]

IN CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 767] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in the case of State of Alabama vs. Ralph D. Aber- be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in each of said cases and that said testimony may nathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assign-

ment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated at the lunch [fol. 768] counter in the company of others of both the Negro and White races, in the bus terminal waiting room designated 'white'. The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After seating himself at the lunch counter with

his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1961.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, By: Fred D. Gray.

[File endorsement omitted]

[fol. 769] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 771]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 108

FRED L. SHUTTLESWORTH,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 772]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 773] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 48

EX PARTE FRED L. SHUTTLESWORTH

IN RE: FRED L. SHUTTLESWORTH, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 108, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Dénied: No Opinion

[fol. 774]

EX PARTE FRED L. SHUTTLESWORTH, Petitioner

IN RE: FRED L. SHUTTLESWORTH, Appellant,

vs.

STATE OF ALABAMA, Appellee.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Fred L. Shuttlesworth, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Fred L. Shuttlesworth was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, [fol. 775] warrant, and complaint are so vague, indefinite,

and uncertain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the Affidavit and the Complaint, where the Affidavit alleged in the alternative that petitioner disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the Complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace".

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offense of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119(1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the [fol. 776] Constitution of the United States, nor deny to

him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and eminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner

[fol. 777] rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who accompanied him was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

[fol. 778] (f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection

afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1) of the Constitution.

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

[fol. 779] Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully Submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama,

Attorneys for Petitioner.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

Duly sworn to by Fred D. Gray, jurat omitted in printing.

[fol. 780] Certificate of Service (omitted in printing).

[fol. 781] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 783]

CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the record here. Please see side folio 496, printed page 254.

[fol. 785]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled the State of Alabama, Plaintiff vs. George B. Smith, Defendant.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge of the Court of Common Pleas of Montgomery personally appeared M. S. Butler who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one George B. Smith did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come to Montgomery, Alabama, which was subject to martial rule and did unlawfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count 2: George B. Smith did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greetings:

You are hereby commanded to arrest George B. Smith and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of:

Count 1: Disorderly conduct (T.14, Sec. 119(1))

Count 2: Unlawful Assembly (T.14, Sec. 407)

and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, A.D., 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

[fol. 786]

IN THE COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

No. 22,752

THE STATE,

vs.

GEORGE B. SMITH.

Charge: Disorderly Conduct, Unlawful Assembly

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

5/25/61 Warrant issued and delivered to Sheriff.

5/25/61 Warrant executed by arresting the defendant and committing him to jail (or releasing on bond).

5/29/61 Bond, $1,000.00 Approved and filed, Sureties.

9/15/61 Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution. In addition to fifteen (15) days in the County Jail.

Also Four (4) Motions as Follows:
August 11, 1961—for continuance—Denied
September 15, 1961—to quash Denied
September 15, 1961—Demurrer—Denied
September 15, 1961—to exclude evidence, Denied.

Bill of Cost.

Clerk's fees	$ 2.50
Solicitor's fees	10.00
Sheriff's fees	10.00
Library fees	.50

Clerk's Certificate to Transcript (omitted in printing).

[fol. 787]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

vs.

GEORGE B. SMITH, alias
GEORGE BUNDY SMITH.

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford and alleges that:

Count 1: George B. Smith, alias George Bundy Smith, whose names is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel;

Count 2: George B. Smith, alias George B. Smith, alias George Bundy Smith, whose name is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama and it was necessary for his own safety for him to be protected by military and civil police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 789]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

VS.

GEORGE SMITH.

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both Negro and white races, in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an agent, R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter defendant was approached by Sheriff M. S. Butler, of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119(1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

"George Smith did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Mont-

gomery. Count II. George Smith did meet with two or more persons to commit a breach of the peace or to do an unlawful act."

[fol. 790] That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens travelling throughout the United States, pursuant to the Fourteenth Amendment of the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection af-

forded defendant by the due process clause of the Fourteenth Amendment of the United States;

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Sec. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Sec. 8 of the Constitution and thereby deprives defendant of rights of free transit on interstate commerce carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, Sec. 8), of the Constitution of the United States:

[fol. 791] 8) it affirmatively appears from the warrant, affidavit and the complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom and usage of enforced racial segregation in the use of facilities and service which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this warrant, affidavit and complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein):

9) it affirmatively appears from the affidavit, warrant and complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this warrant and affidavit deprives defendant

of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the finding of the United States District Court for the Middle District of Alabama, is annexed hereto as Exhibit A, and made a part hereof.

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 So. Union St., Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

[fol. 792]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

H. L.

[fol. 797]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

v.

GEORGE SMITH.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the affidavit, warrant and complaint, in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said affidavit, warrant and complaint fail to allege any offense cognizable by this court.

2. For that the affidavit, warrant and complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the warrant, affidavit and complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite warrant, affidavit and complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the fourteenth Amendment to the Constitution of the United States.

4. For that the warrant, affidavit, and complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1) which said act is vague, indefinite and uncertain. To require de-

fendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that count II of the complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama 1940, and/or Title 14, Section 407, Code of Alabama 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and complaint in this case, it is unconstitutional [fol. 798] in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the warrant, affidavit and complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

10. For that the warrant, affidavit, and complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper warrant of arrest was issued for the arrest of defendant prior to the time the defendant was arrested.

12. For that the warrant of arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the affidavit, warrant and complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the warrant, affidavit, and complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this warrant, affidavit, and complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316 (d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the affidavit and warrant that defendant was arrested as a means of perpetuting an unlawful and unconstitutional practice, custom and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this warrant and affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitu- [fol. 799] tion of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49, U.S.C. Sec. 316(d)).

16. For that said allegations in said complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said warrant is based upon an affidavit and the allegations of said affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said complaint and affidavit are vague, indefinite and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said warrant is based upon an affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said warrant is based upon an affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive, or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said affidavit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said complaint and affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119 (1).

[fol. 800] 26. For that Count I of said complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1) but said complaint is vague, indefinite and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said complaint and affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterout conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of the statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper warrant of arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the warrant of arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

32. For aught that appears, the warrant is based upon an affidavit, and the allegations of said affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the complaint charges that the defendant did meet with two or more persons to commit a breach of the peace or to do an unlawful act, but said [fol. 801] count fails to allege any facts in support thereof.

34. For that Count II of the affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the complaint fails to allege any offense cognizable by this Court.

38. For that the complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316, (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the warrant and affidavit are charged in the alternative and one or more of said al- [fol. 802] ternative does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the complaint is based upon an affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the affidavit and the allegations of the complaint.

50. That there is a fatal variance between the allegations of Count I of the affidavit and the allegations of count I of the complaint, in that said count in said affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery."

Whereas Count I of the complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing the said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the affidavit and the allegations of Count II of the complaint, in that said count in said affidavit charges that the defendant:

> "did meet with two or more persons to commit a breach of the peace or to do an unlawful act."

Whereas count II of the complaint charges that the defendant:

> "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were [fol. 803] under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama; and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 804]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

GEORGE B. SMITH.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—

November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the Warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES

STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE

STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOICE

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH

STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER

ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 805]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

GEORGE SMITH.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the court being of opinion, it is considered and ordered by the Court, and it is the judgment of the court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the court and it is the judgment and sentence of the court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the court that the said defendant perform hard labor for Montgomery [fol. 806] County for an additional term of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals for Alabama, the defendant in open court gives notice of appeal and asks for suspension of sentence pending said appeal. It is Therefore considered and ordered by the Court that this sentence be and the same is hereby suspended pending appeal and that pending appeal

the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 807]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

VS.

GEORGE SMITH.

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the defendant in the above styled cause and moves the Court to set aside its finding of the defendant guilty and the judgment rendered thereon, on, to-wit: November 20, 1961, and grant the defendant a new trial; and as grounds for said motion, the defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the defendant's motion to continue the arraignment of the defendant to the same day, date and time of the trial of the defendant on the merits of this cause.

2. The court erred in denying and overruling the defendant's demurrers to the warrant, affidavit, and the complaint filed in this cause.

3. The court erred in denying and overruling the defendant's motion to quash the warrant, affidavit, and the complaint filed in this cause.

4. The court erred in denying the motion of the defendant to exclude the State's evidence made at the conclusion of the state's evidence.

5. The court erred in sustaining the state's oral motion to strike the exhibits attached to defendant's motion to exclude the state's evidence.

6. The Court erred in ruling that the exhibits attached to defendant's motion to exclude the State's evidence were inadmissible.

7. The Court erred in denying the motion of the defendant to exclude the State's evidence made at the conclusion of all the evidence.

8. The conviction of the defendant in this case under the evidence introduced was a denial of defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights to the due process of law guaranteed by Article 1, Section VI of the Constitution of Alabama, 1901.

11. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights to due process of law guaranteed by Article 1, Section 13 of the Constitution of Alabama, 1901.

12. The conviction of the defendant under the evidence introduced in this case is a denial of defendant's rights under Article 1, Section 7 of the Constitution of Alabama, 1901.

13. The Subjection of the defendant to trial on the affi-
[fol. 808] davit and complaint filed in this cause was a denial of the defendant's rights to due process of law under Sections 4, 6, 7 and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the defendant to trial on the affidavit filed in this cause was a denial of the defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the defendant.

16. The court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the court is contrary to the evidence in the case.

18. The judgment of the court is contrary to the law in the case.

19. The judgment of the court is contrary to the weight of the evidence in the case.

20. The judgment of the court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the defendant was based upon a complaint, which said complaint did not allege when the alleged offense was committed.

22. That the conviction of the defendant was based upon a complaint, and for aught that appeared in the complaint, this action was barred by the statute of limitations.

23. That there was a fatal variance between the allegations of the affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses as charged, the prosecution having failed to present any evidence upon which it could rationally be found that the defendant committed the offenses with which he is charged, that conviction of the defendant upon the facts proved deprived the defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the defendant rights secured by him by the

Interstate Commerce act and the commerce clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by [fol. 809] arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119, (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) The statutes fail to give the defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119, (1) Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection

clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the defendant: (a) without proof that the defendant had any intent to commit a crime; (b) without proof that the defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the defendant and the acts or threatened acts in breach of the peace by persons other than the defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary, and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially [fol. 810] mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the defendant under the evidence of this case:

(a) violated defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate commerce act (Title 49, U.S.C. Section 316 (d)), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8 of the Constitution).

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of

the Constitution of the United States and the Interstate Commerce Act.

[fol. 811] 32. The judgment of the Court is so excessive as to deprive the defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 So. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 813]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

GEORGE SMITH.

ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 814]

IN CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above-styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 815] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assign-

ment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court of Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 5, 1961, defendant herein, a Negro, a citizen of the United States, accompanied by ten others, was arrested in [fol. 816] the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated at the lunch counter in the company of others of both Negro and White Races, in the bus terminal waiting room designated 'white'. The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was

approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the defendants, by: Fred D. Gray.

[File endorsement omitted]

[fol. 817] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 818]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 109

GEORGE SMITH,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 819]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through His Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 820] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 49

Ex Parte GEORGE SMITH

In Re:

GEORGE SMITH, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 109, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred Gray, 34 North Perry Street, Montgomery, Alabama.

Solomon Seay, 811 West Jeff Davis Avenue, Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York.

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 821]

Ex Parte George Smith, Petitioner

In Re: George Smith, Petitioner,

vs.

State of Alabama, Appellee.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, George Smith, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by Court of Appeals of Alabama on the 23rd day of October, 1962, wherein George Smith was the petitioner and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and uncertain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the

Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

[fol. 822] 3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash; and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the affidavit and the complaint where the affidavit alleged in the alternative that defendant disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace," while the complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace."

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 823] 9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither petitioner, nor any of the persons who accompanied him, was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion [fol. 824] guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316 (d), and imposes an unconstitutional burden on interstate commerce in commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of Certiorari.

[fol. 825] Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis, Montgomery, Alabama,

Attorneys for Applicant.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York.

Louis H. Pollak, New Haven, Connecticut..

Duly sworn to by Fred D. Gray, jurat omitted in printing.

Certificate of Service (omitted in printing).

[fol. 826] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 828] CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the record here. Please see side folio 496, printed page 254.

[fol. 830]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama, Plaintiff vs. David E. Swift, Defendant.

IN COURT OF COMMON PLEAS, MONTGOMERY COUNTY,

STATE OF ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one David E. Swift did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count II

David E. Swift did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks, Judge.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County
To Any Lawful Officer of the State of Alabama, Greeting:

You are hereby commanded to arrest David E. Swift and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I—Disorderly Conduct—T 14, Sec. 119(1) Count

II—Unlawful Assembly—T 14, Sec. 407, and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

[fol. 831]

IN THE COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

No. 22,753

Charge: Disorderly Conduct and Unlawful Assembly

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

THE STATE,

vs.

DAVID E. SWIFT.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

5/25/61—Warrant issued and delivered to Sheriff.

5/25/61—Warrant executed by arresting the defendant and committing him to jail. (or releasing him on bond)

5/29/61—Bond $1,000.00 approved and filed.

9/15/61—Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution, in addition to fifteen (15) days in the County Jail.

Bill of Cost

Clerk's fees	$ 2.50
Solicitor's fees	10.00
Sheriff's fees	10.00
Library fee	.50

Also Four (4) Motions as Follows:

August 11, 1961 for continuance—"denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"denied"
September 15, 1961 to exclude evidence—"denied"

Clerk's Certificate to Transcript (omitted in printing)

[fol. 832]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

VS.

DAVID E. SWIFT, alias DAVID EVERETT SWIFT.

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1: David E. Swift, alias David Everett Swift, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil personnel; Count 2: David E. Swift, alias David Everett Swift, whose name is to affiant otherwise unknown, did meet with two

or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 835]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

v.

DAVID SWIFT.

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a White person, a citizen of the United States, accompanied by ten others, was

arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both the Negro and White races in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "David Swift did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II David Swift did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or [fol. 836] boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denied defendant the right to travel in interstate carriers and have free access to the terminal and other facili-

ties of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., §316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, §8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, §8) of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit [fol. 837] and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States

District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

[fol. 838]

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 842] [File endorsement omitted]

[fol. 843]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

THE STATE OF ALABAMA,

v.

DAVID SWIFT.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Compliant fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit, and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count 1 of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pur-

suant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is [fol. 844] interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316(d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the [fol. 845] use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite, and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace: but saitl complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affidavit fails to aver what the violent, profane, indecent,

[fol. 846] offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane,

indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defen- [fol. 847] dant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or do an unlawful act;" but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

[fol. 818] 44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Inter-State Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob

action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II [fol. 849] of the Complaint, in that said Count in said Affidavit charges that the defendant:

"did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

"did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said City and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully Submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 850]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

DAVID E. SWIFT.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT —November 14, 1961

This day came the State by its Solicitor and came also the defendant, in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the Warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 851]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

DAVID E. SWIFT.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the some is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is

guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an additional term [fol. 852] of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 853]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

v.

DAVID SWIFT.

MOTION FOR NEW TRIAL—December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights [fol. 854] under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as

[fol. 855] interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the defendant; (a) without proof that the De-

fendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (1), Code of Alabama, 1940, [fol. 856] and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and acccess, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in [fol. 857] contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, N.Y.

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 859]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA,

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

DAVID E. SWIFT.

ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set

aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 860]

IN CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above-styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 861] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the

Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was refiled in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a White person and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated [fol. 862] at the lunch counter in the company of others of both the Negro and White races, in the bus terminal wait-

ing room designated 'white'. The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro Patrons of R. E. McRae. After purchasing his ticket and seating himself at the lunch counter, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, by: Fred D. Gray.

[File endorsement omitted]

[fol. 863] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 864]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 110

DAVID E. SWIFT,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 865]

IN COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 866] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 50

EX PARTE DAVID E. SWIFT

IN RE: DAVID E. SWIFT, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 110, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants: Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama;

Of Counsel: Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 867]

EX PARTE DAVID E. SWIFT, Applicant,

IN RE: DAVID E. SWIFT, Appellant,

vs.

STATE OF ALABAMA, Appellee.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your applicant, David E. Swift, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein David E. Swift was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your applicant avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your applicant further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your applicant in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of applicant's contention that the affidavit, [fol. 868] warrant, and complaint are so vague, indefinite, and uncertain that the applicant was deprived of due process of law guaranteed to him by the Fourteenth Amend-

ment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred (Motion to Quash) in holding that the applicant's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the applicant alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the applicant was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and service which are an integral part of interstate commerce, thereby depriving applicant of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the affidavit and the complaint where the affidavit alleged in the alternative that defendant disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace," while the complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace."

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this applicant, abridge the right of free speech and [fol. 869] assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119 (1) as interpreted and applied in convicting the applicant of a crime (a) without proof that the applicant had any intent to commit a crime; (b) without proof that the applicant had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of applicant and the acts or threatened acts in breach of the peace by persons other than the applicant. Applicant was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the applicant has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of applicant in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged the prosecution having failed to present any evidence upon which it could rationally be found that the applicant committed the offenses with which he is charged, that conviction of the applicant upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the applicant rights secured [fol. 870] by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of applicant in that the evidence showed that neither applicant, nor any of the persons who accompanied him, was not engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did applicant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Applicant and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of applicant and the others with whom he was associated under these circumstances:

(a) violates applicant's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates applicant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates applicant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates applicant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates applicant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates applicant's right not to be tried on charges [fol. 871] so vague as to transgress the procedural protection afforded applicant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies applicant the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., pp. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives applicant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

[fol. 872] Wherefore, your applicant prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your applicant further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of his petition.

Respectfully Submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for Applicant.

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama.

Of Counsel: Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

Duly sworn to by Fred D. Gray, jurat omitted in printing.

[fol. 873] Certificate of Service (omitted in printing).

[fol. 874] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 876]

CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the record here. Please see side folio 496, printed page 254.

[fol. 878]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama vs. Wyatt Tee Walker, Defendant.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler, who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961 one Wyatt Tee Walker did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

Count II Wyatt Tee Walker did meet with two or more persons to commit a breach of peace or to do an unlawful act, against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me, this 25 day of May, 1961.

Alex A. Marks, Judge.

IN COURT OF COMMON PLEAS,
MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

You are hereby commanded to arrest Wyatt Tee Walker and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count I Disorderly Conduct (T 14, Sec. 119 (1) Count II Unlawful Assembly (T 14, Sec. 407), and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, A. D. 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

[fol. 879]

IN THE COURT OF COMMON PLEAS,
MONTGOMERY COUNTY, ALABAMA
No. 22,754

THE STATE,
vs.
WYATT TEE WALKER.

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

Charge: Disorderly Conduct and Unlawful Assembly.

Witness for State: Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

5-25-61 Warrant issued and delivered to Sheriff.

5-25-61 Warrant executed by arresting the defendant and committing him to jail (or releasing him on bond).

5-29-61 Bond $1,000.00 approved and filed. Sureties.

9-15-61 Defendant tried, convicted and punishment fixed at ninety (90) days in the County Jail.
Defendant appealed to the present term of the Circuit Court and bond fixed at $.....
Appeal Bond $..... Approved and filed.
Sureties.

Also Four (4) Motions as Follows:

August 11, 1961 for continuance—"denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"denied"
September 15, 1961 to exclude evidence—"denied"

Bill of Cost.

Clerk's Fees	$ 2.50
Solicitor's fees	10.00
Sheriff's fees	10.00
Library fees	.50

Clerk's Certificate to Transcript (omitted in printing).

[fol. 880]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

No. 195

STATE OF ALABAMA,

vs.

WYATT TEE WALKER, alias W. TEE WALKER.

(DC and Unlawful Assembly)

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that Wyatt Tee Walker,

alias W. Tee Walker, whose name is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large [fol. 881] number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 882]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Case No. 195

STATE OF ALABAMA,

vs.

WYATT T. WALKER.

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT —Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion sets down and assigns the following:

On May 25, 1961, defendant herein, is a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was standing near the telephone booth talking to Mr. Floyd Mann in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to [fol. 883] an 'agent', R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After accompanying his companions to the "White" waiting room, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Wyatt T. Walker did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of

Montgomery. Count II. Wyatt T. Walker did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

[fol. 884] 3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded

defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U. S. C., pp.316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, pp.8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, pp.8) of the constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part [fol. 885] of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection

of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 890] [File endorsement omitted]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA

Case No. 195

THE STATE OF ALABAMA,

vs.

WYATT T. WALKER.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119 (1), which

said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

[fol. 891] 6. For that Count II of the Complaint charges a violation of Code of Alabama 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage [fol. 892] of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and, Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U. S. C. Sec. 316 (d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316 (d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction, it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

[fol. 893] 23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did

disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or langauge or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or boisterous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the [fol. 894] disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the Defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

32. For aught that appears, the Warrant is based upon an Affidavit, and the allegations of said Affidavit are the mere conclusions of the pleader without any facts alleged therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful Act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

36. For that Count II of the Complaint fails to allege the identity of any person or persons with whom the defendant met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privi-

leges, and immunities guaranteed to him by Constitution [fol. 895] of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and [fol. 896] intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

> "did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

"did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

"did meet wtih two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven Connecticut,

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 897]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

WYATT TEE WALKER.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—
November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the Warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
STATE OF ALABAMA
Court Met Pursuant to Adjournment
Present the Honorable Eugene W. Carter, Judge Presiding

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—
November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 898]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

WYATT TEE WALKER.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And

after hearing all the evidence presented on behalf of the State, the Defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and it is the judgment of the Court, that the said defendant is gullty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor [fol. 899] for Montgomery County an additional term of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and the same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 900]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,

vs.

WYATT T. WALKER.

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's Evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under Article 1, Section 7, of the Constitution of Alabama, 1901.

[fol. 901] 13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be founded that the Defendant committed the offense with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as

[fol. 902] interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the basis of mere threatened breach of the peace by persons other than the Defendant: (a) without proof that the Defendant

had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

[fol. 903] 29. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violated Defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation [fol. 904] of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation

of the power and authority delegated to the Congress of the United States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 906]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

WYATT TEE WALKER.

ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein being argued by counsel and understood by the Court, and

being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court, the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 907]

IN CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH,

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STATE OF ALABAMA,

vs. No. 195

WYATT TEE WALKER.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above-styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 908] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforementioned cases desires to make Assignment of Errors it

shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors into the record in each of said cases and that said Assignment of Errors, may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was re-filed in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or Courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was standing near the [fol. 909] telephone booth talking to Mr. Floyd Mann, in the bus terminal waiting room designated 'white'. The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Cor-

poration, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After accompanying his companions to the "White" waiting room, defendant was approached by Sheriff M. S. Butler, of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, By: Fred D. Gray.

By: Fred D. Gray

[File endorsement omitted]

[fol. 910] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 911]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 111

WYATT TEE WALKER,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 912]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING —November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 913] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 51

EX PARTE WYATT TEE WALKER

IN RE: WYATT TEE WALKER, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 111, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 W. Jeff Davis Ave., Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 914]

EX PARTE WYATT TEE WALKER, Applicant

IN RE: WYATT TEE WALKER, Appellant,

vs.

STATE OF ALABAMA, Appellee.

To the Honorable Chief Justice and Associate of the Supreme Court of Alabama:

Your applicant, Wyatt Tee Walker, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by the Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Wyatt Tee Walker was the appellant and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your applicant in this:

1. The Court of Appeals erred in holding that the affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and un-

certain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the applicant's Motion to Quash the Warrant, Affidavit and complaint in this cause was properly denied where the applicant alleged in his Motion to Quash, and presented evidence [fol. 915] to sustain the allegations, that the arrest of the applicant was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving applicant of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the affidavit and the complaint where the affidavit alleged in the alternative that defendant disturbed the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace, while the complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace."

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to exclude the evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119(1), Title 14, Code, do not either in themselves or as construed and applied to this applicant, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal

protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119(1) as interpreted and applied in convicting the applicant of a crime (a) without proof that the applicant had any intent to commit a crime; (b) without proof that the applicant had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of applicant and the acts or threatened acts in breach of the peace by persons other than the applicant. Applicant was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 916] 9. The Court of Appeals erred in affirming the conviction of defendant below where the state failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and imminent danger of a breach of the peace;

and as such the applicant has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

10. The Court of Appeals erred in affirming the conviction of applicant in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the applicant committed the offenses with which he is charged, that conviction of the applicant upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901,

Article 1, Section 6, and deny the applicant rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of applicant in that the evidence showed that neither applicant, nor any of the persons who accompanied him, was not engaged in any conduct that could be characterized as violent, profane, indecent, offensive; or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did applicant, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Applicant and his companions, were either clerics and or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of applicant and the others with whom he was associated under these circumstances:

(a) violates applicant's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment of the Constitution of the United States;

[fol. 917] (b) violates applicant's right to freedom of speech guranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates applicant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates applicant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates applicant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates applicant's right not to be tried on charges so vague as to transgress the procedural protection af-

forded applicant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies applicant the right to travel in interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., pp. 316(d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives applicant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution).

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham, about previous statements inconsistent with statement made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statement.

[fol. 918] Wherefore, your applicant prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your applicant further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for Applicant.

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama.

of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, Yale University, New Haven, Connecticut.

Duly sworn to by Fred D. Gray, jurat omitted in printing.

[fol. 919] Certificate of Service (omitted in printing).

[fol. 920] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 922] CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the record here. Please see side folio 496, printed page 254.

[fol. 924]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled The State of Alabama vs. Bernard S. Lee, Defendant.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

WARRANT AND AFFIDAVIT FILED IN COURT OF COMMON PLEAS

Before me, the undersigned Judge or Clerk of the Court of Common Pleas of Montgomery, personally appeared M. S. Butler, who being duly sworn, deposes and says, on oath, that in said County, on or about May 25, 1961, one Bernard S. Lee did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery (T. 14, Sec. 119(1)).

Count 2: Bernard S. Lee did meet with two or more persons to commit a breach of the peace or to do an unlawful act. (T. 14, Sec. 407), against the peace and dignity of the State of Alabama.

M. S. Butler.

Sworn to and subscribed before me this 25 day of May, 1961.

Alex A. Marks, Judge.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

The State of Alabama
Montgomery County

To Any Lawful Officer of the State of Alabama, Greeting:

You are hereby commanded to arrest Bernard S. Lee and bring him before the Judge of the Court of Common Pleas of Montgomery to answer the State of Alabama on a charge of Count 1: Disorderly Conduct (T. 14, Sec. 119

[fol. 925] (1)) Count 2: Unlawful Assembly (T. 14, Sec. 407) and have you then and there this writ with your return thereon.

Witness my hand, this the 25 day of May, A. D., 1961.

Alex A. Marks, Judge, Court of Common Pleas of Montgomery.

IN COURT OF COMMON PLEAS,

MONTGOMERY COUNTY, ALABAMA

TRANSCRIPT OF APPEAL TO CIRCUIT COURT

No. 22,748

THE STATE

vs.

BERNARD S. LEE

The State of Alabama
Montgomery County

Charge: Disorderly Conduct, Unlawful Assembly.

Witness for State. Willie B. Painter, Floyd Mann, M. S. Butler, Gen. Henry V. Graham, R. C. Houlton.

5/23/61 Warrant issued and delivered to Sheriff.

5/25/61 Warrant executed by arresting the defendant and committing him to jail (or releasing him on bond).

5/29/61 Bond $1,000.00 approved and filed. Sureties.

9/15/61 Defendant tried, convicted and fined One Hundred Dollars and the cost of the prosecution, in addition to ten (10) days in the County Jail.
Defendant appealed to the present term of the Circuit Court and bond fixed at $.....
Appeal Bond $..... Approved and filed. Sureties.

Bill of Cost.

Clerk's Fees	$ 2.50
Solicitor's Fees	10.00
Sheriff's Fees	10.00
Library fees	.50

Also Four (4) Motions as Follows:

August 11, 1961 for continuance—"Denied"
September 15, 1961 to quash—"denied"
September 15, 1961 Demurrer—"denied"
September 15, 1961 to exclude evidence—"denied"

Clerk's Certificate to transcript (omitted in printing).

[fol. 926]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

(DC and Unlawful Assembly)

No. 189

STATE OF ALABAMA

vs.

BERNARD S. LEE, alias
BERNARD SCOTT LEE

SOLICITOR'S COMPLAINT—Filed November 13, 1961

Comes the State of Alabama by its Circuit Solicitor, William F. Thetford, and alleges that:

Count 1: Bernard S. Lee, alias Bernard Scott Lee, whose name is to affiant otherwise unknown, did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of peace, in that he did wilfully and intentionally seek service at a public lunch

counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police [fol. 927] personnel;

Count 2: Bernard S. Lee, alias Bernard Scott Lee, whose name is to affiant otherwise unknown, did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama.

William F. Thetford, Solicitor, 15th Judicial Circuit, State of Alabama.

[File endorsement omitted]

[fol. 928]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

No. 189

STATE OF ALABAMA

vs.

BERNARD LEE

MOTION TO QUASH THE WARRANT, AFFIDAVIT AND COMPLAINT—Filed November 14, 1961

Now comes the defendant and respectfully moves this honorable Court to quash the warrant, affidavit and the complaint in this cause and hold the same for naught and discharge the defendant and as grounds for said motion [fol. 929] sets down and assigns the following:

On May 25, 1961, defendant herein, is a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery, Alabama. At the time of his arrest defendant was seated at the lunch counter in the company of others of both Negro and White races in the bus terminal waiting room designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent", R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Company, a Delaware corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae. After seating himself at the lunch counter with his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler of Montgomery County and informed that he was under arrest.

Thereafter, on May 25, 1961, there issued from the Court of Common Pleas of Montgomery County a warrant of arrest charging defendant with disorderly conduct (Section 119 (1) of Title 14 of the Alabama Code) and unlawful assembly (Section 407, Title 14 of the Alabama Code) which arrest warrant was issued pursuant to the following affidavit filed with that Court by the arresting officer, Sheriff Butler, on May 25, 1961:

> "Bernard Lee did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery. Count II Bernard Lee did meet with two or more persons to commit a breach of peace or to do an unlawful act."

That said defendant, nor any of the persons who accompanied him, were engaged in any conduct that could be characterized as violent, profane, indecent, offensive or boisterous, nor used language that could be so characterized nor engaged in any conduct calculated to provoke a breach of the peace. Neither did defendant, nor any persons in his company, meet together to commit a breach of the peace of to do any unlawful act. Defendant and his companions, most of all of whom including defendant were either clerics and/or teachers or students of religion were expressing their commitment to the ideal of equal justice [fol. 930] under law springing in part from their religious beliefs. The issuance of an affidavit and warrant of arrest under these circumstances:

1) violates defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

2) violates defendant's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

3) violates defendant's right to freedom of expression guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

4) violates defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

5) violates defendant's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

6) violates defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

7) denies defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U. S. C., pp. 315 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, pp. 8 of the Constitution and thereby deprives defendant of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the commerce clause (Article 1, pp. 8) of the Constitution of the United States;

8) it affirmatively appears from the Warrant, Affidavit and the Complaint that the cause of action was brought against defendant as a means of perpetuating an unlawful

and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant, Affidavit and Complaint deprives defendant of rights, privileges and immunities secured by the Interstate Commerce Act, the Fourteenth Amendment to the Constitution of the United States, and contravenes the commerce clause [fol. 931] thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama finding that defendant's arrest was for the purpose of enforcing segregation is annexed hereto as Exhibit A and made a part hereof just as if fully set out herein);

9) it affirmatively appears from the Affidavit, Warrant and Complaint that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the commerce clause thereof (a copy of the Finding of the United States District Court for the Middle District of Alabama is annexed hereto as Exhibit A, and made a part hereof).

The premises considered, defendant prays that this Court will set this motion down for a hearing and after a hearing of said motion and the proof which defendant offers to make in support thereof, grant said motion.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 North McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for Defendant.

[File endorsement omitted]

[fol. 932] CLERK'S NOTE

Exhibit "A" to motion—Excerpt of transcript of proceedings in the case of John R. Lewis, et al. v. Southeastern Greyhound Lines, etc., CA No. 1724-N in the USDC for the Middle District of Alabama (Finding) has been omitted from the record here. Please see side folio 9, printed page 9.

[fol. 936]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Case #189

THE STATE OF ALABAMA,

vs.

BERNARD LEE.

DEMURRER—Filed November 14, 1961

Now comes the defendant in the above-styled cause and demurs to the Affidavit, Warrant and Complaint in said cause, and separately and severally to each count thereof, and as grounds for said Demurrer sets out and assigns separately and severally the following:

1. For that the said Affidavit, Warrant and Complaint fail to allege any offense cognizable by this Court.

2. For that the Affidavit, Warrant, and Complaint fail to allege any offense punishable under the laws of the State of Alabama.

3. For that the allegations of the Warrant, Affidavit and Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial [fol. 937] on such vague and indefinite Warrant, Affidavit and Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

4. For that the Warrant, Affidavit, and Complaint fail to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

5. For that Count I of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 119(1), which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by the Constitution of the United States.

6. For that Count II of the Complaint charges a violation of Code of Alabama, 1940, Title 14, Section 407, which said act is vague, indefinite and uncertain. To require defendant to stand trial on an accusation made pursuant to and in accordance with said vague, indefinite, and uncertain act deprives defendant of due process of law guaranteed to him by Constitution of the United States.

7. If Section 119(1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, is interpreted and applied to convict the defendant of a crime or offense on the basis of the facts alleged in the Affidavit, Warrant, and Complaint in this case, it is unconstitutional in that it deprives the defendant of rights secured to him by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States; and Commerce Clause of the Constitution of the

United States, the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the defendant's constitutionally protected rights to free expression, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

8. For that the Warrant of Arrest was issued without sufficient facts alleged in the affidavit to constitute an offense under the laws of the State of Alabama.

9. For aught that appears, the allegations of the Warrant, Affidavit, and Complaint are the mere conclusions of the Pleader, unsupported by any facts alleged therein.

10. For that the Warrant, Affidavit, and Complaint fail to allege that defendant had knowledge that the act complained of would provoke a breach of the peace.

[fol. 938] 11. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

12. For that the Warrant of Arrest was issued for the arrest of the defendant without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

13. For that it affirmatively appears from the Affidavit, Warrant, and Complaint that the defendant had a legal right to do the act complained of.

14. For that it affirmatively appears from the Warrant, Affidavit, and Complaint that this cause of action was brought against defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. Therefore, to require defendant to stand trial pursuant to this Warrant, Affidavit and, Complaint deprives defendant of rights, privileges, and immunities secured to him by the Interstate Commerce Act (49 U. S. C. Sec. 316(d)), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

15. For that it affirmatively appears from the Affidavit and Warrant that defendant was arrested as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of Interstate Commerce. To require defendant to stand trial pursuant to this Warrant and Affidavit deprives defendant of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States and contravenes the Commerce Clause thereof and the Interstate Commerce Act (Title 49 U.S.C. Sec. 316(d)).

16. For that said allegations in said Complaint are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

17. For that said Complaint fails to inform the defendant of the specific alternative under the statute which he is called upon to defend.

18. For that said Warrant is based upon an Affidavit and the allegations of said Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

19. For that said Complaint and Affidavit are vague, indefinite, and uncertain and in the event of a conviction would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

[fol. 939] 20. For that said Warrant is based upon an Affidavit the allegations of which are vague, indefinite, and uncertain and in the event of a conviction it would deprive the defendant of due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

21. For that said Warrant is based upon an Affidavit the allegations of which fail to allege the name of any person in the City of Montgomery or State of Alabama, who was disturbed by any act or acts done by the defendant.

22. For that said Warrant of Arrest for the defendant was issued without probable cause and in violation of Article 1, Section 5, Constitution of Alabama, 1901.

23. For that said Complaint alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said complaint fails to aver any acts the defendant did which conduct could be construed as conduct calculated to provoke a breach of the peace.

24. That said Affidavit alleges that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace; but said Affidavit fails to aver what the violent, profane, indecent, offensive, boisterous conduct, or language or conduct calculated to create a breach of the peace consists of.

25. For that said Complaint and Affidavit fail to aver facts in support of the allegations that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace in violation of Code of Alabama, 1940, Title 14, Section 119(1).

26. For that Count I of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but said Complaint is vague, indefinite, and uncertain in that it fails to inform the defendant which of said offenses he is alleged to have violated.

27. For that Count II of said Complaint charges in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama [fol. 940] 1940, Title 14, Section 119(1), but the facts constituting said violent, profane, indecent, offensive or bois-

terous conduct, or language or conduct calculated to provoke a breach of the peace are not set forth, therefore said Count of said Complaint is vague, indefinite and uncertain in that it fails to apprise the defendant of which of said offenses he allegedly committed.

28. For that said Complaint and Affidavit charge in the disjunctive that the defendant did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace in violation of the Code of Alabama, 1940, Title 14, Section 119(1), but no facts are set forth apprising the defendant of what specific provisions of said statute he violated in that the alleged facts constituting the disturbance of the peace of others by violent, profane, indecent, offensive or boisterous conduct, or language or by conduct calculated to provoke a breach of the peace are not set forth.

29. For that no proper Warrant of Arrest was issued for the arrest of the defendant prior to the time the defendant was arrested.

30. For that the Code of Alabama, 1940, Title 14, Section 119(1), and/or Code of Alabama, 1940, Title 14, Section 407 is on its face unconstitutional in that it deprives the defendant of the due process of law under the Fourteenth Amendment to the Constitution of the United States and it violates Article 1, Section 6, Alabama Constitution, 1901.

31. For that the Warrant of Arrest was issued without sufficient facts alleged in the Affidavit to constitute an offense under the Laws of the State of Alabama.

32. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful Act," but said count fails to allege any facts in support therein.

33. For that Count II of the Complaint charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful Act," but said count fails to allege any facts in support thereof.

34. For that Count II of the Affidavit charges that the defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act," but said count fails to allege any facts in support thereof.

35. For that Count II of the Affidavit fails to allege the identity of any person or persons with whom the defendant [fol. 941] met "to commit a breach of the peace or do an unlawful act."

37. For that the Complaint fails to allege any offense cognizable by this Court.

38. For that the Complaint fails to allege any offense punishable under the laws of the State of Alabama.

39. For that the allegations of the Complaint are so vague and indefinite that the defendant is not thereby apprised of the nature and cause of the accusation against him. To require defendant to stand trial on such vague and indefinite Complaint would deprive defendant of rights, privileges, and immunities guaranteed to him by Constitution of Alabama, 1901, Article 1, Section 6, and the Fourteenth Amendment to the Constitution of the United States.

40. For that the Complaint fails to allege with sufficient certainty any person or persons whose peace was disturbed by any act of the defendant.

41. For aught that appears the allegations of the Complaint are the mere conclusions of the pleader, unsupported by any facts alleged therein.

42. For that the Complaint fails to allege that defendant had knowledge that the acts complained of would provoke a breach of the peace.

43. For that it affirmatively appears from the Complaint that the defendant had a legal right to do the act complained of.

44. For that it affirmatively appears from the Complaint that this cause of action was brought against the defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segre-

gation in the use of facilities and services which are an integral part of interstate commerce. To require defendant to stand trial on this Complaint deprives defendant of rights, privileges, and immunities secured to him by the Inter-state Commerce Act (49 U.S.C. Sec. 316 (d), the Fourteenth Amendment to the Constitution of the United States, and contravenes the Commerce Clause thereof.

45. For that the allegations in the Warrant and Affidavit are charged in the alternative and one or more of said alternatives does not state an offense under the laws of the State of Alabama.

46. For that the Warrant and Affidavit fail to inform the defendant of the specific alternative under the statute which he is called upon to defend.

47. For that it affirmatively appears that the Complaint is based upon an Affidavit, the allegations of which are the mere conclusions of the pleader, without any facts alleged therein.

48. That the Complaint fails to allege when the alleged [fol. 942] offense was committed.

49. That there is a fatal variance between the allegations of the Affidavit and the allegations of the Complaint.

50. That there is a fatal variance between the allegations of Count I of the Affidavit and the allegations of Count I of the Complaint, in that said Count in said Affidavit charges that the defendant:

> "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when

the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery;"

Whereas Count I of the Complaint charges that the defendant:

"did disturb the peace of others in Montgomery, Alabama, at a time when said City and County were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel."

51. That there is a fatal variance between the allegations of Count II of the Affidavit and the allegations of Count II of the Complaint, in that said Count in said Affidavit charges that the defendant:

"did meet with two or more persons to commit a breach of peace or to do an unlawful act;"

Whereas Count II of the Complaint charges that the defendant:

"did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial law as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police

personnel, against the peace and dignity of the State of Alabama."

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 943]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

BERNARD S. LEE.

ORDER ON PLEADINGS AND ARRAIGNMENT OF DEFENDANT—November 14, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney

and the defendant's motion to quash the State's warrant, affidavit and complaint being argued by counsel and understood by the Court and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said motion to quash the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the defendant's demurrer to the warrant, affidavit and complaint being argued by counsel and understood by the Court, it is considered and ordered by the Court and it is the judgment of the Court that the said demurrer to the warrant, affidavit and complaint be and the same is hereby overruled. And to this ruling of the Court the defendant excepts thereto.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. It is further ordered by the Court that the trial of this cause be set for November 20, 1961.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE L. CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN, JR.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD S. LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN DAVID MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD B. NOYCE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE B. SMITH.

STATE OF ALABAMA,
vs. No. 194
DAVID E. SWIFT.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

ORDER CONSOLIDATING CAUSES FOR TRIAL—November 20, 1961

This day came the State by its Solicitor and came also the defendants in their own proper person and by attorney, and it is agreed between the parties that these causes shall all be tried together and that separate judgments be entered in each individual case.

It is therefore considered, ordered and adjudged by the Court that all of said causes be tried at the same time and that the same testimony shall apply to each individual case and that separate judgments be rendered in each individual case.

[fol. 944]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

STATE OF ALABAMA,

vs.

BERNARD LEE.

JUDGMENT AND SENTENCE—November 20, 1961

This day came the State by its Solicitor and came also the defendant in his own proper person and by attorney, and with the consent of the State, the defendant withdraws his demand for a jury trial and it is agreed that this cause be tried by the Court; it is therefore considered and ordered by the Court that the demand for a jury trial be and the same is hereby withdrawn and this cause be tried by the Court without the intervention of a jury.

And the said defendant being duly arraigned upon the complaint for his plea thereto says he is not guilty. And after hearing all the evidence presented on behalf of the State, the defendant files a motion to exclude all the State's evidence introduced on behalf of the State and to render a judgment for the defendant; and said motion to exclude the evidence being considered and argued by counsel, it is considered and ordered by the Court and it is the judgment of the Court that said motion to exclude the evidence presented by the State be and the same is hereby denied, and to this ruling of the Court the defendant excepts thereto.

Thereupon and after hearing all the evidence introduced on behalf of the State and the defendant, the Court being of opinion, it is considered and ordered by the Court, and

it is the judgment of the Court, that the said defendant is guilty as charged in the complaint and a fine of $100.00 is assessed against him by the Court.

And the said defendant being asked by the Court if he had anything to say why the sentence of the law should not now be pronounced upon him, says nothing. It is therefore considered and adjudged by the Court and it is the judgment and sentence of the Court that the said defendant perform hard labor for Montgomery County for thirty (30) days for the fine and also an additional thirty (30) days for the sentence; and the cost of this prosecution not being presently paid or otherwise secured and the same amounting to $60.00; it is further considered, ordered and adjudged by the Court that the said defendant perform hard labor for Montgomery County for an additional term [fol. 945] of 80 days for the cost incurred in this Court, at the rate of 75¢ per day, making in all 140 days during which said defendant is to perform hard labor for Montgomery County, beginning from this day and ending on April 9, 1962.

And questions of law arising in this case for the decision of the Court of Appeals of Alabama, the defendant in open Court gives notice of appeal and asks for a suspension of sentence pending said appeal. It is therefore considered and ordered by the Court that this sentence be and same is hereby suspended pending appeal and that pending appeal the defendant may be admitted to bail in the sum of $750.00, to be made and approved as required by law.

[fol. 946]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Case #189

STATE OF ALABAMA,

vs.

BERNARD LEE.

MOTION FOR NEW TRIAL—Filed December 12, 1961

Now comes the Defendant in the above styled cause and moves the Court to set aside its finding of the Defendant guilty and the Judgment rendered thereon, on, to-wit: November 20, 1961, and grant the Defendant a new trial; and as grounds for said Motion, the Defendant sets down and assigns separately and severally the following:

1. The Court erred in denying and overruling the Defendant's Motion to Continue the Arraignment of the Defendant to the Same Day, Date, and Time of the Trial of the Defendant on the merits in this cause.

2. The Court erred in denying and overruling the Defendant's Demurrers to the Warrant, Affidavit, and the Complaint filed in this cause.

3. The Court erred in denying and overruling the Defendant's Motion to Quash the Warrant, Affidavit, and the Complaint filed in this cause.

4. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of the State's evidence.

5. The Court erred in sustaining the State's oral Motion to Strike the exhibits attached to Defendant's Motion to Exclude the State's Evidence.

6. The Court erred in ruling that the exhibits attached to Defendant's Motion to Exclude the State's Evidence were inadmissible.

7. The Court erred in denying the Motion of the Defendant to exclude the State's evidence made at the conclusion of all of the evidence.

8. The conviction of the Defendant in this case under the evidence introduced was a denial of Defendant's rights under Article 1, Section IV, of the Constitution of Alabama, 1901.

9. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under the Fourteenth Amendment to the Constitution of the United States.

10. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights to [fol. 947] the due process of law guaranteed by Article 1, Section VI, of the Constitution of Alabama, 1901.

11. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights of due process of law guaranteed by Article 1, Section 13, of the Constitution of Alabama, 1901.

12. The conviction of the Defendant under the evidence introduced in this case is a denial of Defendant's rights under Article 1, Section 7, of the Constitution of Alabama, 1901.

13. The subjection of the Defendant to trial on the Affidavit and Complaint filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

14. The subjection of the Defendant to trial on the Affidavit filed in this cause was a denial of the Defendant's rights to due process of law under Sections 4, 6, 7, and 13 of Article 1, of the Constitution of Alabama, 1901.

15. The Court erred in sustaining objections, made by the State, to the introduction of evidence offered on behalf of the Defendant.

16. The Court erred in overruling defendant's objections to evidence offered on behalf of the State.

17. The judgment of the Court is contrary to the evidence in the case.

18. The judgment of the Court is contrary to the law in the case.

19. The judgment of the Court is contrary to the weight of the evidence in the case.

20. The judgment of the Court is contrary to the great preponderance of the evidence in the case.

21. That the conviction of the Defendant was based upon a Complaint, which said Complaint did not allege when the alleged offense was committed.

22. That the conviction of the Defendant was based upon a Complaint, and for aught that appeared in the Complaint, this action was barred by the Statute of Limitations.

23. That there was a fatal variance between the allegations of the Affidavit and the proof adduced on the trial of this cause.

24. That there was a fatal variance between the allegations of the Complaint and the proof adduced on the trial of this cause.

25. The record is so devoid of evidentiary support of the charges made and of the elements of the offenses charged, the prosecution having failed to present any evidence upon which it could rationally be found that the Defendant committed the offenses with which he is charged, that conviction of the Defendant upon the facts proved deprived the Defendant of due process of law and the [fol. 948] equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and denied to the Defendant rights secured to him by the Interstate Commerce Act and the Commerce Clause of the United States Constitution.

26. Section 119 (1) of Title 14, Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprives the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the Interstate Commerce Act, by arbitrarily and discriminatorily interfering with the Defendant's constitutionally protected rights to free speech, peaceable assembly, freedom of association, and the right of transit between states free from unjust discrimination.

27. Title 14, Section 119 (1), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional because it deprived the Defendant of rights secured by the due process clause of the Fourteenth Amendment to the Constitution of the United States in that:

(a) The statutes are so vague, uncertain and indefinite that they afford no fair warning to the Defendant as to what conduct might transgress it.

(b) the statutes provide no ascertainable standard of guilt and fail to reveal or provide a standard of criminality; and,

(c) the statutes fail to give the Defendant fair notice of the nature and cause of the accusation against him.

28. Title 14, Section 119 (a), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the Defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the statutes required and permitted the Defendant to be convicted of a crime on the

basis of mere threatened breach of the peace by persons other than the Defendant: (a) without proof that the Defendant had any intent to commit a crime; (b) without proof that the Defendant had knowledge or scienter of the acts or threatened acts in breach of the peace by other persons; and (c) without proof that there was any causal re-
[fol. 949] lationship between the acts of the Defendant and the acts or threatened acts in breach of the peace by persons other than the Defendant. The aforesaid statutes, as interpreted and applied in this case, are an arbitrary and discriminatory exercise of governmental power to classify innocent and unknowing acts as criminal acts.

29. Title 14, Section 119 (a), Code of Alabama, 1940, and/or Title 14, Section 407, Code of Alabama, 1940, as interpreted and applied in convicting the Defendant of a crime or offense on the basis of the facts proved in this case, is unconstitutional, because it deprived the defendant of rights secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that the said statutes require and permit the defendant to be convicted of a crime for merely seeking service at a public lunch counter with a racially mixed group, which acts cannot be made criminal acts or punished as criminal acts by the State, or any agency of the State, under the Fourteenth Amendment.

30. The conviction of the Defendant under the evidence of this case:

(a) Violated Defendant's privilege and immunity of freedom to travel, and to congregate with citizens traveling throughout the United States;

(c) violated Defendant's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violated Defendant's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violated Defendant's right to freedom of movement throughout the United States, guaranteed to him by the

due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violated Defendant's right not to be tried on charges so vague as to transgress the procedural protection afforded defendant by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denied Defendant the right to travel on interstate carriers and have free access to the terminal and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C. Section 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprived Defendant of rights of free transit on interstate [fol. 950] carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, all in contravention of the Commerce Clause (Article 1, Section 8) of the Constitution.

31. It affirmatively appears from the evidence in this case that this prosecution was instituted against Defendant as a means of perpetuating an unlawful and unconstitutional practice, custom, and usage of enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce. Conviction of this defendant thereby deprived him of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution of the United States, the Commerce Clause of the Constitution of the United States, and the Interstate Commerce Act.

32. The judgment of the Court is so excessive as to deprive the Defendant of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

33. Conviction of the Defendant, on the basis of the facts proved in this case is an unconstitutional usurpation of the power and authority delegated to the Congress of the United

States by Article 1, Section 8, of the Constitution of the United States.

Fred D. Gray, 34 No. Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 S. Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York 18, New York;

Louis H. Pollak, New Haven, Connecticut.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 952]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

Court Met Pursuant to Adjournment

Present the Honorable Eugene W. Carter, Judge Presiding

Offense: Disorderly Conduct and Unlawful Assembly

THE STATE OF ALABAMA,

vs.

BERNARD LEE.

ORDER DENYING MOTION FOR NEW TRIAL—February 1, 1962

This day came the State by its Solicitor and came also the defendant by attorney and the defendant's motion to set aside the judgment and sentence of the Court heretofore entered in this cause and to grant him a new trial herein

being argued by counsel and understood by the Court, and being considered by the Court, it is considered and ordered by the Court and it is the judgment of the Court that said motion be and the same is hereby denied; and to this ruling of the Court the defendant excepts thereto.

And the defendant gives notice of appeal from the overruling of this motion to the Court of Appeals of Alabama.

[fol. 953]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,

STATE OF ALABAMA

STATE OF ALABAMA,
vs. No. 185
RALPH D. ABERNATHY.

STATE OF ALABAMA,
vs. No. 186
CLYDE CARTER.

STATE OF ALABAMA,
vs. No. 187
WILLIAM S. COFFIN.

STATE OF ALABAMA,
vs. No. 188
JOSEPH CHARLES JONES.

STATE OF ALABAMA,
vs. No. 189
BERNARD LEE.

STATE OF ALABAMA,
vs. No. 190
JOHN MAGUIRE.

STATE OF ALABAMA,
vs. No. 191
GAYLORD NOICE.

STATE OF ALABAMA,
vs. No. 192
FRED L. SHUTTLESWORTH.

STATE OF ALABAMA,
vs. No. 193
GEORGE SMITH.

STATE OF ALABAMA,
vs. No. 195
WYATT TEE WALKER.

STATE OF ALABAMA,
vs. No. 194
DAVID SWIFT.

STIPULATION AND AGREEMENT REGARDING THE RECORD ON APPEAL—Filed February 1, 1962

It is stipulated by and between the Honorable William F. Thetford, as Circuit Solicitor for the Fifteenth Judicial Circuit of Alabama, and the attorneys of record for each of the defendants in the above styled cases that all of said cases involve substantially the same issues and questions of law; that said cases were consolidated for trial in the Circuit Court of Montgomery County, Alabama; that thereafter separate judgments of conviction of each defendant were entered by the Court; that defendants, and each of them, have taken separate appeals from the separate judgments of conviction of the Court and the separate orders of the Court denying their separate Motion for New Trial.

It is now, therefore, agreed by and between the parties hereto as follows:

[fol. 954] 1. That the transcript of the testimony shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying said testimony into the record in each of said cases and that said testimony may be considered by the Appellate Court or courts just as if said testimony had been set out in the separate records in each of the aforesaid cases.

2. That the parties hereby waive any and all objections to the submission of the above said separate cases to the

Appellate Court or Courts, on the transcript of the testimony as copied in the case of State of Alabama vs. Ralph D. Abernathy without the necessity of copying said testimony into the record of each of the aforementioned cases.

3. That in the event, the defendant in each of the aforesaid cases desires to make Assignment of Errors it shall be sufficient to make Assignment of Errors in the record in the case of State of Alabama vs. Ralph D. Abernathy, only, and said Assignment of Errors shall be considered as a part of the record in each of the other ten cases aforesaid, without the necessity of copying Assignment of Errors into the record in each of said cases and that said Assignment of Errors may be considered by the Appellate Court or Courts just as if said Assignment of Errors had been set out in the separate records in each of the aforesaid cases.

4. That a Motion to Exclude all of the State's evidence was filed in each of the aforementioned cases at the conclusion of the State's case, and said motion was refiled in each of said cases at the conclusion of all of the evidence, and that said motion to exclude in each of said cases was substantially the same and that said motion shall be copied into the record in the case of State of Alabama vs. Ralph D. Abernathy, only, except paragraph 14, which said paragraph is hereinafter set forth in this agreement; and said motion to exclude as copied in the Abernathy case and paragraph 14 of the motion to exclude as hereinafter set out shall be considered as part of the record in each of the other ten cases aforesaid without the necessity of copying said motion into the record in each of said cases and that said motion and said paragraph 14 of said motion may be considered by the Appellate Court or courts just as if said motion had been set out in the separate records in each of the aforesaid cases. Paragraph 14 reads as follows:

On May 25, 1961, defendant herein, a Negro and a citizen of the United States, accompanied by ten others, was arrested in the Trailways Bus Terminal in Montgomery. At the time of his arrest, defendant was seated at the lunch [fol. 955] counter in the company of others of both the Negro and white races, in the bus terminal waiting room

designated "white". The bus terminal is leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an "agent," R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corp. which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and Negro patrons of R. E. McRae; after seating himself at the lunch counter with his companions whom he was bidding goodbye, defendant was approached by Sheriff M. S. Butler, of Montgomery County and informed that he was under arrest.

5. That with the permission of the appellate court or courts, the said separate cases may be briefed and argued together on appeal.

6. That a copy of this agreement shall be included in the record in each of the aforesaid cases.

In Witness Whereof, we have hereunto set our hands this 1st day of February, 1962.

William F. Thetford, Solicitor, Fifteenth Judicial Circuit.

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 34 So. McDonough Street, Montgomery, Alabama;

Charles S. Conley, 530 South Union Street, Montgomery, Alabama;

Jack Greenberg, 10 Columbus Circle, New York, New York;

Louis H. Pollak, New Haven, Connecticut,

Attorneys for the Defendants, By: Fred D. Gray.

[File endorsement omitted]

[fol. 956] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 957]

IN THE COURT OF APPEALS OF ALABAMA

October Term, 1962-63

3 Div. 105

BERNARD S. LEE,

v.

STATE.

Appeal from Montgomery Circuit Court

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

JUDGMENT—October 23, 1962.

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of Abernathy v. State, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(No Opinion)

[fol. 958]

IN THE COURT OF APPEALS OF ALABAMA

APPLICATION FOR REHEARING—November 6, 1962

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Jack Greenberg, Louis H. Pollak.

IN THE COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 959] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

3 Div. No. 45

EX PARTE BERNARD S. LEE

IN RE: BERNARD S. LEE, Appellant,

vs.

STATE OF ALABAMA, Appellee.

(3 Div. 105, Court of Appeals of Alabama)

APPLICATION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF ALABAMA—Filed December 3, 1962

Attorneys for Appellants:

Fred Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon Seay, 811 West Jeff Davis Avenue, Montgomery, Alabama.

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

December 3, 1962—Submitted on Briefs

July 25, 1963—Writ Denied: No Opinion

[fol. 960]

EX PARTE BERNARD S. LEE, Petitioner,

IN RE: BERNARD S. LEE, Petitioner,

vs.

STATE OF ALABAMA, Appellee.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Bernard S. Lee, hereby respectfully petitions this Honorable Court for a writ of certiorari, directed to the Court of Appeals of Alabama, to send up the record and proceedings in this case, and to revise, review, reverse and hold for naught that certain judgment and opinion rendered by Court of Appeals of Alabama on the 23rd day of October, 1962, wherein Bernard S. Lee was the petitioner and the State of Alabama was the appellee, which said judgment of the Court of Appeals affirmed the judgment of the Circuit Court of Montgomery, Alabama.

Your petitioner avers that he filed his application for rehearing in said Court of Appeals within the time required by law, and that said application for rehearing in the Court of Appeals was overruled on the 20th day of November, 1962.

Your petitioner further shows unto this Honorable Court that the Court of Appeals erred in affirming the conviction of your petitioner in this:

1. The Court of Appeals erred in holding that the Affidavit filed in this case was not void, but was sufficient to authorize the issuance of the Warrant and said Affidavit furnished sufficient foundation for a prosecution and conviction upon the Solicitor's Complaint.

2. The Court of Appeals erred in affirming the Trial Court's denial of petitioner's contention that the affidavit, warrant, and complaint are so vague, indefinite, and uncertain that the petitioner was deprived of due process of law guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Constitution of Alabama 1901, Article 1, Section 6.

3. The Court of Appeals erred in holding that the petitioner's Motion to Quash the Warrant, Affidavit and Complaint in this cause was properly denied where the petitioner alleged in his Motion to Quash, and presented evidence to sustain the allegations, that the arrest of the petitioner was contrived and designed to perpetuate an unlawful and unconstitutional practice, custom, and usage of [fol. 961] enforced racial segregation in the use of facilities and services which are an integral part of interstate commerce, thereby depriving petitioner of rights, privileges, and immunities guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and the Interstate Commerce Act.

4. The Court of Appeals erred in holding that there was no fatal variance between the affidavit and the complaint where the affidavit alleged in the alternative that defendant disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace," while the complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace."

5. The Court of Appeals erred in holding that the demurrers were properly overruled by the Trial Court.

6. The Court of Appeals erred in holding that the Motion to Exclude the Evidence filed by the defendant below in the Circuit Court was properly denied and overruled by said Court.

7. The Court of Appeals erred in holding that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119 (1), Title 14, Code, do not either in themselves or as construed and applied to this petitioner, abridge the right to free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor deny to him the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

8. The Court erred in sustaining and upholding the validity of Code of Alabama, Title 14, Section 119(1) as interpreted and applied in convicting the petitioner of a crime (a) without proof that the petitioner had any intent to commit a crime; (b) without proof that the petitioner had knowledge of threatened acts of breach of the peace by other persons; and (c) without proof that there was any causal relationship between the acts of petitioner and the acts or threatened acts in breach of the peace by persons other than the petitioner. Petitioner was thereby deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

9. The Court of Appeals erred in affirming the conviction of defendant below where the State failed to prove beyond a reasonable doubt and to a moral certainty that:

(a) a breach of the peace in fact did occur, or

(b) that there was a clear and eminent danger of a breach of the peace;

and as such the petitioner has been denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the United States Constitution.

[fol. 962] 10. The Court of Appeals erred in affirming the conviction of petitioner in that the record in this case is so devoid of evidentiary support of the charges made and of the elements of the offenses charged the prosecution having failed to present any evidence upon which it could rationally be found that the petitioner committed the offenses with which he is charged, that conviction of the petitioner upon the facts proved deprived him of the due process of law and the equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, and the Constitution of the State of Alabama, 1901, Article 1, Section 6, and deny the petitioner rights secured by the Interstate Commerce Act and Commerce Clause of the United States Constitution.

11. The Court of Appeals erred in affirming the conviction of petitioner in that the evidence showed that neither

petitioner, nor any of the persons who accompanied him, was engaged in any conduct that could be characterized as violent, profane, indecent, offensive, or boisterous, nor used language that could be so characterized, nor engaged in any conduct calculated to provoke a breach of the peace. Neither did petitioner, nor any persons in his company, meet together to commit a breach of the peace or to do any unlawful act. Petitioner and his companions were either clerics and/or teachers or students of religion and were expressing their commitment to the ideal of equal justice under the law springing in part from their religious beliefs. The affirmation of the conviction of petitioner and the others with whom he was associated under these circumstances:

(a) violates petitioner's privilege and immunity of freedom of travel, and to congregate with citizens traveling throughout the United States, pursuant to the Fourteenth Amendment to the Constitution of the United States;

(b) violates petitioner's right to the equal protection of the laws guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(c) violates petitioner's right to freedom of speech guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(d) violates petitioner's right to freedom of religion guaranteed to him by the Fourteenth Amendment to the Constitution of the United States;

(e) violates petitioner's right to freedom of movement throughout the United States, guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(f) violates petitioner's right not to be tried on charges so vague as to transgress the procedural protection afforded petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(g) denies petitioner the right to travel in interstate [fol. 963] carriers and have free access to the terminal

and other facilities of interstate carriers and to congregate with others having such rights of transit and access, without racial discrimination, guaranteed to him by the Interstate Commerce Act (Title 49, U.S.C., p. 316 (d), and imposes an unconstitutional burden on interstate commerce in violation of Article 1, Section 8 of the Constitution and thereby deprives petitioner of rights of free transit on interstate carriers, free access to the terminal and other facilities of interstate carriers and freedom to congregate with other persons enjoying such transit and access, or in contravention of the commerce clause (Article 1, of the Constitution.

12. The Court of Appeals erred in holding that there was no error in the Trial Court's refusal to allow the defendant below to question his own witness, to-wit: General Graham about previous statements inconsistent with statements made at the trial and to introduce a transcript of testimony in a previous case in another court, which transcript showed that said witness was hostile and made prior inconsistent statements.

Wherefore, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Appeals, requiring said Court to certify and send this Honorable Court a full and complete transcript of the record of all the proceedings of the Court of Appeals in said cause, and that this Honorable Court will, after an examination of all the proceedings heretofore had in this cause, correct the errors complained of and reverse the judgment of the Court of Appeals.

Your petitioner further prays that this Honorable Court will stay or suspend the execution of the judgment of the Court of Appeals, or request that the Court of Appeals withdraw its certificate of affirmance in this cause pending a ruling of this Honorable Court on the petition for writ of certiorari.

Submitted herewith is your petitioner's brief and argument in support of this petition.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr.
Attorneys For Applicant

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Solomon S. Seay, Jr., 811 West Jeff Davis Ave., Montgomery, Alabama;

Of Counsel:

Jack Greenberg, Leroy D. Clark, 10 Columbus Circle, New York 19, New York;

Louis H. Pollak, New Haven, Connecticut.

[fol. 964] *Duly sworn to by Fred D. Gray, jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 965] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 967] CLERK'S NOTE

Order denying petitions for writs of certiorari to the Court of Appeals has been omitted from the records here. Please see side folio 496, printed page 254.

[fol. 969]

SUPREME COURT OF THE UNITED STATES

No. 575—October Term, 1963

RALPH D. ABERNATHY, et al., Petitioners,

vs.

ALABAMA.

ORDER ALLOWING CERTIORARI—January 6, 1964

The petition herein for a writ of certiorari to the Court of Appeals of the State of Alabama is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black and Mr. Justice White took no part in the consideration or decision of this petition.

SUPREME COURT, U.S.
LIBRARY

FILED
OCT 22 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. [redacted] 9

RALPH D. ABERNATHY, CLYDE CARTER, WILLIAM S. COFFIN, JR., JOSEPH CHARLES JONES, BERNARD S. LEE, JOHN DAVID MAGUIRE, GAYLORD B. NOYCE, FRED L. SHUTTLESWORTH, GEORGE SMITH, DAVID E. SWIFT and WYATT TEE WALKER,

Petitioners,

—v.—

STATE OF ALABAMA.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. .....

RALPH D. ABERNATHY, CLYDE CARTER, WILLIAM S. COFFIN, JR., JOSEPH CHARLES JONES, BERNARD S. LEE, JOHN DAVID MAGUIRE, GAYLORD B. NOYCE, FRED L. SHUTTLESWORTH, GEORGE SMITH, DAVID E. SWIFT and WYATT TEE WALKER,

Petitioners,

—v.—

STATE OF ALABAMA.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals of Alabama in the cases of *Ralph D. Abernathy* v. *State of Alabama; Clyde Carter* v. *State of Alabama; William S. Coffin, Jr.* v. *State of Alabama; Joseph Charles Jones* v. *State of Alabama; Bernard S. Lee* v. *State of Alabama; John David Maguire* v. *State of Alabama; Gaylord B. Noyce* v. *State of Alabama; Fred L. Shuttlesworth* v. *State of Alabama; George Smith* v. *State of Alabama; David E. Swift* v. *State of Alabama* and *Wyatt Tee Walker* v. *State of Alabama,* entered on October 23, 1962. The Supreme Court of Alabama denied certiorari on July 25, 1963.

Citations to Opinions Below

The opinion of the Court of Appeals of Alabama in *Abernathy* v. *Alabama* (R. A. 476)[1] is reported at 155 So. 2d 586 and is set forth in the appendix attached hereto, *infra*, p. 1a. The Court of Appeals rendered no opinion in the other cases but affirmed the convictions on the authority of the *Abernathy* case (R. Ca. 34; R. Co. 36; R. J. 35; R. L. 34; R. M. 35; R. N. 35; R. Sh. 34; R. Sm. 34; R. Sw. 35; R. W. 34).

Jurisdiction

The judgment of the Court of Appeals of Alabama in each of these cases was entered on October 23, 1962 (R. A. 475; R. Ca. 34; R. Co. 36; R. J. 35; R. L. 34; R. M. 35; R. N. 35; R. Sh. 34; R. Sm. 34; R. Sw. 35; R. W. 34). Rehearing was denied on November 20, 1962 (R. A. 489; R. Ca. 35; R. Co. 37; R. J. 36; R. L. 35; R. M. 36; R. N. 36; R. Sh. 35; R. Sm. 35; R. Sw. 36; R. W. 35). The Supreme Court of Alabama denied certiorari on July 25, 1963 (R. A. 496).[2]

The jurisdiction of this Court in each of these cases is invoked pursuant to Title 28, United States Code, Section 1257(3), petitioners having asserted below and asserting here, deprivation of rights, privileges and immunities secured by the Constitution of the United States.

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1 The record in the *Abernathy* case is cited herein as "R. A." followed by the page number. The *Abernathy* record contains the trial transcript for each case. The other records are cited as follows: (1) Carter—"R. Ca."; (2) Coffin—"R. Co."; (3) Jones—"R. J."; (4) Lee—"R. L."; (5) Maguire—"R. M."; (6) Noyce—"R. N."; (7) Shuttlesworth—"R. Sh."; (8) Smith—"R. Sm."; (9) Swift—"R. Sw."; and (10) Walker—"R. W."

2 In all cases except *Abernathy*, the order of the Supreme Court of Alabama denying certiorari was not included in the certified records as bound. However, the order in the *Abernathy* record, p. 496, contains the captions of all eleven cases, and in

Questions Presented

In May of 1961, when Montgomery, Alabama, was under the control of the Alabama National Guard, petitioners, seven Negroes and four whites, were escorted by Guardsmen to an interstate bus terminal, from which seven of petitioners were planning to take a bus to Mississippi. While awaiting the departure of the bus, petitioners, in the presence of their Guard escort—an escort which included the senior guard officers controlling the city—crossed the terminal waiting room and sat down at the terminal lunch counter to get a snack. The Guard officers did not tell any of petitioners not to sit down at the counter; nor did they tell any of petitioners not to do so prior to escorting petitioners to the terminal. After petitioners were seated at the lunch counter, the Sheriff of Montgomery County, acting on a signal from a ranking Guard officer, arrested petitioners for breach of the peace and unlawful assembly.

Petitioners promptly sought a federal court injunction to restrain the county solicitor from prosecuting them on these charges. After taking extensive testimony, District Judge Johnson denied the injunction on the ground that 28 U. S. C. §2283 prevented him from restraining a pending state criminal prosecution; but in announcing his decision, Judge Johnson said that the arrest of petitioners was designed to perpetuate racial segregation.

At petitioners' ensuing state court trial, ranking Guard officers testified that, in view of the presence across the

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each of the other bound records appears an unnumbered page with the notation that the writ of certiorari was denied without opinion (R. Ca. 35-36; R. Co. 37-38; R. J. 36-37; R. L. 35-36; R. M. 36-37; R. N. 36-37; R. Sh. 35-36; R. Sm. 35-36; R. Sw. 36-37; R. W. 35-36). Submitted with the bound records in these ten cases are certified copies of the Supreme Court of Alabama's order denying certiorari.

street from the terminal of a large, hostile white crowd, petitioners' action in seating themselves at the lunch counter had been likely to provoke violence by the crowd.

Did the arrest and subsequent conviction of petitioners deprive them of rights protected by:

1. the due process clause of the Fourteenth Amendment in that they were convicted on a record barren of any evidence of guilt;

2. the due process clause of the Fourteenth Amendment in that they were convicted under penal provisions which were so indefinite and vague as to afford no ascertainable standard of criminality;

3. the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in that they were arrested and convicted to enforce racial discrimination;

4. the due process clause of the Fourteenth Amendment, as that clause incorporates the First Amendment's protection of freedom of expression, assembly and religion;

5. Title 49, United States Code, Section 316(d), which prohibits discrimination in terminal facilities of bus companies operating in interstate commerce;

6. the commerce clause of the Constitution, in that the prosecution of petitioners constituted an unlawful burden on commerce;

7. the due process clause of the Constitution in that petitioners were, in effect, entrapped, in the sense that their military guardians permitted them to sit down at a lunch counter where they had federal and constitutional rights to be served and then, without requesting petitioners to withdraw from the lunch counter, arrested them for this permitted exercise of their federal rights;

8. the supremacy clause of the Constitution in that the courts of Alabama tried and convicted petitioners pursuant to their arrest on charges which, a federal district court had already determined, were intended to perpetuate racial segregation?

Statutory and Constitutional Provisions Involved

Each of these cases involves Section 1 of the Fourteenth Amendment, Article I, Section 8 (commerce clause), and Article VI (supremacy clause) of the Constitution of the United States.

Each petitioner was convicted under Code of Alabama, Title 14, Section 407 (1958):

> If two or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall, on conviction, be punished, at the discretion of the jury, by fine or imprisonment in the county jail, or hard labor for the county, for not more than six months.

Every petitioner except Walker was also convicted under Code of Alabama, Title 14, Section 119 (1) (Supp. 1961):

> Any person who disturbs the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars ($500.00) or be sentenced to hard labor for the county for not more than twelve (12) months, or both, in the discretion of the Court.

Each case also involves Title 49, United States Code, Section 316 (d):

> . . . It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever:

Statement

Petitioners, seven Negro and four white men, were arrested in the Trailways Bus Depot in Montgomery, Alabama, on May 25, 1961, while participating in a "Freedom Ride" to test racial restrictions on the use of bus terminal facilities serving interstate commerce (R. A. 172-80). The arrests occurred shortly after some of the petitioners sat together at the terminal's segregated lunch counter (R. A. 132, 180).

On the same day, May 25, 1961, a suit was filed in the United States District Court for the Middle District of Alabama seeking to enjoin the arrest of persons using interstate transportation facilities in Montgomery on a desegregated basis. Petitioner Abernathy was an original plaintiff in that action. The Attorney General of Alabama and the Circuit Solicitor for the Fifteenth Judicial Circuit (encompassing Montgomery) were defendants. Immediately after their arrests, the other ten petitioners filed a motion to intervene in the federal court action, which was granted on May 26, 1961. *Lewis* v. *Greyhound Corp.*, 199 F. Supp. 210, 213. A hearing was held in the district court on September 5, 1961. After hearing the plaintiffs' evi-

dence, including the testimony of the ranking officers who arrested these eleven petitioners, Judge Johnson dismissed the action as to the arrests of these petitioners on the ground that 28 U. S. C. §2283 "precludes the granting of such relief." Judge Johnson did, however, state:

> the court does not find or believe that the arrest [of the eleven petitioners] against whom these criminal proceedings are now pending was for any purpose other than to enforce segregation. As a matter of fact, in this posture of the case, the court is of the opinion that the arrest of those individuals was for the purpose of enforcing segregation in these facilities" (R. A: 9, 12-13; R. Ca. 8, 11; R. Co. 9, 12-13; R. J. 9, 12-13; R. L. 9, 12-13; R. M. 9, 12-13; R. N. 9, 12-13; R. Sh. 8, 11; R. Sm. 8, 11; R. Sw. 9, 12-13; R. W. 8, 12).

The eleven petitioners were tried together on September 15, 1961, in the Court of Common Pleas of Montgomery County on charges that each petitioner:

> did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace in that he did come to Montgomery, Alabama which was subject to martial rule and did unlawfully and intentionally attempt to test segregation laws and custom by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

and

> did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama (R. each case 1).

All eleven defendants were convicted of both breach of the peace (Ala. Code, tit. 14, §119(1) (Supp. 1961)) and unlawful assembly (Ala. Code, tit. 14, §407 (1958)). Walker was sentenced to 90 days in jail, and the others were sentenced to 15 days in jail with fines of $100 and costs (R. each case 2).

On appeal to the Circuit Court of Montgomery County, petitioners were tried again.[3] The eleven cases were consolidated for trial, but a separate judgment was entered in each case (R. A. 21; R. Ca. 20; R. Co. 21; R. J. 21; R. L. 20; R. M. 21; R. N. 21; R. Sh. 20; R. Sm. 20; R. Sw. 21; R. W. 20). Each petitioner was convicted, fined one hundred dollars and sentenced to thirty days at hard labor (R. A. 38; R. Ca. 21; R. Co. 22; R. J. 22; R. L. 21; R. M. 22; R. N. 22; R. Sh. 21; R. Sm. 21; R. Sw. 22; R. W. 21),[4] an increase in jail sentence for each petitioner except Walker.

Appeal was taken to the Court of Appeals of Alabama. Only the *Abernathy* record contained the transcript of trial in the Circuit Court, but pursuant to stipulation (R. A. 47; R. Ca. 30; R. Co. 32; R. J. 31; R. L. 30; R. M. 31; R. N. 31; R. Sh. 30; R. Sm. 30; R. Sw. 31; R. W. 30) the Court of Appeals considered the transcript a part of the record in each of the other cases (R. A. 476-77). The

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3 In the Circuit Court, where proceedings are begun by a Solicitor's complaint (Ala. Code, tit. 15, §363 (1958)), petitioner Walker was charged only with unlawful assembly (Ala. Code, tit. 14, §407 (1958)) (R. W. 3-4) and arraigned on that charge alone (R. A. 68). At the trial the Circuit Judge acknowledged that only one charge was pending against Walker (R. A. 74; see also R. A. 227, 228).

4 Default in payment of the fine will result in an additional thirty days in jail (R. A. 38; R. Ca. 21; R. Co. 22; R. J. 22; R. L. 21; R. M. 22; R. N. 22; R. Sh. 21 R. Sm. 21; R. Sw. 22; R. W. 21). Default in payment of court costs, which also were assessed, will result in an additional 133 days for petitioner Abernathy (R. A. 38-39), 80 days for the others (R. Ca. 21-22; R. Co. 22-23; R. J. 22-23; R. L. 21-22; R. M. 22-23; R. N. 22-23; R. Sh. 21-22; R. Sm. 21-22; R. Sw. 22-23; R. W. 21-22).

Court of Appeals affirmed each judgment of conviction, and rehearing was denied. The Supreme Court of Alabama denied certiorari.

In the Circuit Court the Solicitor's Complaint, which constitutes the formal charge, alleged that each petitioner (except Walker):

> did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil personnel (R. A. 3-4; R. Ca. 3; R. Co. 3; R. J. 3; R. L. 3; R. M. 3; R. N. 3; R. Sh. 3; R. Sm. 3; R. Sw. 3)

and that each petitioner:

> did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel, against the peace and dignity of the State

of Alabama (R. A. 4; R. Ca. 3; R. Co. 3; R. J. 3; R. L. 3; R. M. 3; R. N. 3; R. Sh. 3; R. Sm. 3; R. Sw. 3; R. W. 3-4).

The petitioners are four ministers (Coffin, Abernathy, Walker and Shuttlesworth), three professors of religion (Maguire, Noyce and Swift), three theology students (Carter, Jones and Lee), and a law student (Smith) (R. A. 172-178). Coffin, Maguire, Smith, Noyce and Swift traveled from Connecticut to Atlanta, Georgia, where they were joined by Carter and Jones, who had begun in North Carolina (R. A. 176). On Wednesday, May 24, 1961, the seven set off from Atlanta on a bus trip across the South to determine the extent of segregation in interstate bus terminal facilities and to protest against segregation (R. A. 117, 175, 176). They arrived at the Greyhound terminal in Montgomery late Wednesday afternoon and stayed the night (R. A. 176).

Martial law had been declared in Montgomery on the previous Sunday, May 21, 1961 (R. A. 127-28). At the request of Gen. Henry Graham, Commander of the Alabama National Guard detachment in Montgomery (R. A. 135), the petitioners notified the military authorities of their intention to depart from Montgomery on Thursday morning, and a number of military vehicles were sent to Rev. Abernathy's home, where the petitioners were gathered. A heavily armed military convoy escorted the seven interstate passengers along with Abernathy, Walker, Shuttlesworth, and Lee to the rear of the Trailways terminal (R. A. 83, 129-31, 178, 218). Across the street from the front of the terminal was a crowd of three to five hundred persons (R. A. 77, 122, 131) under the control of more than one hundred National Guardsmen and several civilian law enforcement officers (R. A. 121-23, 219).

Still under military escort, petitioners entered the white waiting room from the rear of the segregated terminal (R. A. 106-07, 123, 132, 180). In the terminal at the time were thirty to fifty persons including the eleven petitioners and twelve to twenty-five Guardsmen and local officers (R. A. 77, 111, 121, 132, 220). After the seven travelers bought tickets to Jackson, Mississippi (R. A. 132, 180), all of the petitioners except Walker, who was making a telephone call (R. A. 123-24), proceeded toward the lunch counter, where some of them sat down on the available seats and ordered coffee (R. A. 132, 133, 180). They were served by the counter man (R. A. 184) after the waitress had moved aside (R. A. 133), but within a very short time Sheriff M. S. Butler arrested all eleven men pursuant to a signal given by Col. Poarch, Staff Judge Advocate of the National Guard (R. A. 76, 84, 89, 127).

It is uncontested that petitioners conducted themselves in an orderly fashion. They were continuously respectful toward the authorities who had escorted them to the terminal and accompanied them inside (R. A. 98, 124, 141, 185). Having been taken into the white waiting room by these authorities, they were unmolested while the travelers bought tickets and Walker used the telephone. They were not told to refrain from buying a cup of coffee, and when they sat down, they were neither requested nor ordered to leave (R. A. 96, 139-40, 186, 211). They were abruptly arrested by the authorities who had brought them to the depot.

While the petitioners were in the terminal, but before they moved toward the lunch counter, two or three white men were ejected from the terminal for pouring coffee on the counter seats. Although Col. Poarch viewed the conduct of these "white toughs" as calculated to provoke a breach of the peace, they were not arrested (R. A. 84, 91, 102, 133, 139, 146).

Sheriff Butler, the officer who arrested petitioners, testified that he heard an "outburst" from the crowd outside when the petitioners sat down at the counter, and that petitioners' conduct could have caused a riot (R. A. 98, 102-03).[5] Col. Poarch stated that the crowd outside was very tense and hostile toward petitioners (R. A. 131); that the "air was electric with excitement and tension" (R. A. 134); that tension inside the terminal increased because the waitresses left the counter area when the petitioners approached (R. A. 133). Col. Poarch said that he had no time to assess the attitudes or actions of the crowd outside (R. A. 146), but he ordered the arrests when petitioners sought service because "you can't yell 'Fire' in a crowded theater" (R. A. 141). "They were arrested because of the danger of provoking a riot causing injury to themselves and to all other persons involved including the National Guardsmen" (R. A. 149). Gen. Graham testified that violation of the custom of segregation at that time could have inflamed the crowd outside (R. A. 211, 220-221). Floyd Mann, Director of Public Safety, thought that petitioners' conduct was calculated to cause disorder in the bus station (R. A. 120).

The size of the crowd outside the terminal was variously estimated at three hundred, several hundred, and four to five hundred (R. A. 131, 122, 77). Uncontradicted testimony establishes that at least one hundred troops were lined up across the street between the crowd and the terminal (R. A. 100, 121-23, 178, 219). Traffic on the street in front of the terminal was blocked off (R. A. 131). Motorcycle policemen were patrolling it, and thirty-five men from the Department of Public Safety were on

5 The state presented testimony that the inside of the terminal was visible through the front windows to the crowd across the street from the terminal (R. A. 103). This was disputed (R. A. 183-84).

hand (R. A. 121-22). Throughout the record there is no reference to any overt action or threat on the part of any person or group outside the station. One prosecution witness testified that no one in the crowd was arrested (R. A. 122).

A considerable amount of testimony was admitted with respect to events of the week previous to these arrests. It was established that a group of Freedom Riders arriving in Montgomery on Saturday, May 20, 1961 were greeted by an angry crowd (R. A. 80). Fighting broke out between whites and Negroes and between local persons and visiting newsmen. Several were hurt, including some of the Riders (R. A. 113-114, 225). An hour after the crowd was dispersed, fighting broke out again (R. A. 114). On the following day, Sunday, May 21, an angry crowd, predominantly white, gathered outside Rev. Abernathy's Negro church where an evening meeting was being conducted (R. A. 81, 82, 114-15, 118). Bricks and rocks were thrown, and a car was found burning when the police arrived (R. A. 81, 115).

Following the Sunday riot, martial law was declared by the Governor (R. A. 128). Fourteen hundred National Guardsmen, armed and equipped, were brought in; the City was patrolled by armed convoys, and sentry posts were set up (R. A. 128). Mr. Mann testified that "racial unrest" continued through the week (R. A. 125). A moving line of cars encircled the Greyhound station on Monday when a group of Freedom Riders was expected, and National Guard reinforcements "encountered some difficulty in clearing the situation up," but the Riders did not appear (R. A. 128). A Negro minister was shot at an unspecified time during the week, but the suspected perpetrators were arrested the following day (R. A. 117, 129). Crowds gathered at various times at

air, bus, and train terminals (R. A. 129). On Wednesday the National Guard escorted two groups of Freedom Riders from Montgomery to the Mississippi line (R. A. 119, 142-143, 206). Col. Poarch testified that the populace and authorities thought the crisis was over on Wednesday when the second group was safely escorted to Mississippi, only to have the seven out-of-state petitioners arrive in Montgomery (R. A. 142-144). Col. Poarch said he had heard that these petitioners had been met by "hostile crowds of some two thousand who stoned the car in which they were riding" from the station (R. A. 143). Another prosecution witness, an observer on the scene, stated that they were greeted by a crowd of 150 to 200, that there were no demonstrations at the time, and no bricks or other objects were thrown (R. A. 154).

Undisputed testimony established that one group of Freedom Riders departing from the Trailways Bus Depot on Wednesday had used the lunch counter on an integrated basis and had remained in the terminal for thirty to forty-five minutes. They were not arrested and no incident occurred although 250 to 350 people were crowded around the terminal (R. A. 223), approximately the same number as on Thursday when petitioners were arrested (R. A. 122). Sheriff Butler, Col. Poarch and Gen. Graham were aware on Thursday that the Trailways lunch counter had been integrated without incident on the previous day (R. A. 95, 135, 206). Petitioner Coffin stated that the petitioners also knew of this when they proceeded to the counter on Thursday (R. A. 177).

The Trailways Bus Depot in Montgomery is "in the business of providing accommodations for interstate passengers" (R. A. 165). It is used by three bus companies engaged in interstate commerce (R. A. 165) and its "facilities are an integral part of interstate commerce" (R. A.

167). The lunch counter portion of the terminal is leased by the three carriers to a corporation which in turn leases it to another corporation which operates the counter under the supervision of an employee of one of the interstate carriers (R. A. 49).[6]

How the Federal Questions Were Raised and Decided Below

In the Circuit Court, petitioners filed identical motions to quash the complaint. Invoking the provisions of the Fourteenth Amendment, petitioners alleged deprivation of freedom of expression, freedom of religion, freedom of movement, and freedom of association; denial of due process arising from prosecution on vague charges; and denial of equal protection of the laws. The motions to quash also claimed that petitioners were arrested in order to enforce segregation in facilities serving interstate commerce, in violation of Title 49, United States Code, Section 316(d) and the commerce clause (Article I, Section 8) of the Constitution as well as the due process and equal protection clauses of the Fourteenth Amendment (R. A. 6-8; R. Ca. 5-7; R. Co. 6-8; R. J. 6-8; R. L. 5-8; R. M. 6-8; R. N. 6-8; R. Sh. 5-7; R. Sm. 5-7; R. Sw. 6-8; R. W. 5-8). The motions were overruled (R. A. 21; R. Ca. 20; R. Co. 21; R. J. 21; R. L. 20; R. M. 21; R. N. 21; R. Sh. 20; R. Sm. 20; R. Sw. 21; R. W. 20).

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6 The parties stipulated (R. A. 47, 49) that:

> ... The lunch counter portion of the terminal is leased by the aforesaid carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal subject to the supervision with respect to the manner of serving white and negro patrons of R. E. McRae.

Petitioners also demurred to the complaint, again raising all of the objections made in the motions to quash. The demurrers alleged, in addition, that each statute under which petitioners were charged was vague, indefinite and uncertain, and as such was unconstitutional on its face and as interpreted and applied (R. A. 14-20; R. Ca. 13-19; R. Co. 13-20; R. J. 14-20; R. L. 13-19; R. M. 14-20; R. N. 14-20; R. Sh. 13-19; R. Sm. 13-19; R. Sw. 14-20; R. W. 13-19). The demurrers were overruled (R. A. 21; R. Ca. 20; R. Co. 21; R. J. 21; R. L. 20; R. M. 21; R. N. 21; R. Sh. 20; R. Sm. 20; R. Sw. 21; R. W. 20).

After presentation of the state's case (R. A. 161), a motion was made on behalf of each petitioner (R. A. 47, 48) to exclude the state's evidence (R. A. 22). This motion made again all objections raised in the motions to quash and demurrers, and in addition alleged a denial of federal due process because the record was devoid of proof of each element of the offenses charged (R. A. 22-27). Attached to the motion to exclude was a copy of the transcript (R. A. 229-472), opinion (R. A. 27-36), and decree (R. A. 36-37) in the case of *John R. Lewis, et al.* v. *Greyhound Corp., et al.*, 199 F. Supp. 210 (M. D. Ala. Nov. 1, 1961), in which the federal court enjoined further arrests such as those of the petitioners and found that the petitioners' arrests were designed to enforce segregation. The Circuit Judge granted the State's motion to strike the exhibits and overruled the petitioners' motion to exclude the evidence (R. A. 163-64). The motion to exclude was presented again at the conclusion of the case, and denied (R. A. 227).

Following the judgment and sentence in the Circuit Court, identical motions for new trial were filed, renewing all objections raised in previous motions (R. A. 40-44; R. Ca. 23-27; R. Co. 24-29; R. J. 24-28; R. L. 23-27; R.

M. 24-28; R. N. 24-28; R. Sh. 23-27; R. Sm. 23-27; R. Sw. 24-28; R. W. 23-27). The motions for new trial were overruled (R. A. 46; R. Ca. 29; R. Co. 31; R. J. 30; R. L. 29; R. M. 30; R. N. 30; R. Sh. 29; R. Sm. 29; R. Sw. 30; R. W. 29).

The Court of Appeals of Alabama, in an opinion delivered in the *Abernathy* case, expressly decided several issues adversely to the petitioners, holding:

> that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119(1), Title 14, Code, supra, do not, either in themselves or as construed and applied to this defendant, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor has he been denied the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States . . . (R. A. 485; appendix, *infra*, p. 10a).

Every issue was met by the Court of Appeals' declaration that "The motion to quash [,] the demurrer, and the motion to exclude the evidence were properly overruled" (R. A. 485; appendix, *infra*, p. 10a).

The Court of Appeals accepted the following definition of unlawful assembly:

> an assembly of [two] or more persons, who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled, as to cause persons in the neighborhood of such assembly to fear on reasonable grounds that the persons so assembled would commit a breach of the peace or provoke others to do so. 2 *Wharton's Criminal Law*, Sec. 853,

p. 721; *Shields* v. *State*, 184 Wis. 448, 204 N. W. 486, 40 A. L. R. 945; *Aron* v. *Wasau*, 98 Wis. 592, 74 N. W. 354 (R. A. 485-86; appendix, pp. 10a-11a).

and this definition of breach of the peace:

> In general terms a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence or tending to provoke or excite others to break the peace. *Shields* v. *State*, *supra*. 8 [Am.] Jur. Sec. 3, p. 834 (R. A. 486; appendix, *infra*, p. 11a).

It held that:

> No specific intent to breach the peace is essential to a conviction for a breach of the peace. *State* v. *Cantwell*, 126 Conn. 1, 8 A. 2d 533; *Cantwell* v. *Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. ed. 1213; 128 A. L. R. 1352. Nor is it necessary to constitute the offense of a breach of the peace that the proof show the peace has actually been broken. *People* v. *Kovalchuck*, 68 N. Y. S. 2d 165; *People* v. *Ripke*, 115 N. Y. S. 2d 590 (R. A. 486; appendix, *infra*, p. 11a).

Asserting that the lawfulness of an act may be determined by the circumstances surrounding it, the Court of Appeals concluded that "it could not conceivably be said that [petitioner] did not have knowledge that his conduct was calculated to incite a breach of the peace . . . Under the facts and circumstances adduced we think the question of whether the defendant's conduct was reasonably calculated to provoke a breach of the peace was one for the trier of fact" (R. A. 487; appendix, *infra*, p. 12a).

In each of the other cases, the Court of Appeals rendered no opinion but affirmed the convictions on the authority of

the *Abernathy* case (R. Ca. 34; R. Co. 36; R. J. 35; R. L. 34; R. M. 35; R. N. 35; R. Sh. 34; R. Sm. 34; R. Sw. 35; R. W. 34). In all eleven cases, the Supreme Court of Alabama denied certiorari without opinion (R. A. 496).

Reasons for Granting the Writ

The decision below conflicts with applicable decisions of this Court on important constitutional issues.

I

The Decision Below Affirms Criminal Convictions Based on No Evidence of Guilt.

A. *Breach of the Peace*

Petitioners were convicted because, as the Solicitor's Complaint alleges, they "did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group." It is not disputed that petitioners had every right to be in the bus terminal and to use the lunch counter on a desegregated basis. See 49 U. S. C. §316(d); *Boynton* v. *Virginia*, 364 U. S. 454; *Gayle* v. *Browder*, 352 U. S. 903; *Morgan* v. *Virginia*, 328 U. S. 373.[7] Nor is there the slightest indication that any of the petitioners lost that right by engaging in conduct or language that could be characterized as violent, profane, indecent, offensive or boisterous.

Nonetheless, it is the state's theory that petitioners abused their rights by exercising them in the presence of

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7 Following these arrests, in September, 1961, the Interstate Commerce Commission issued regulations barring racial segregation in all bus terminal facilities serving interstate commerce. 49 C. F. R. §180(a)(1)-(10).

hostile observers who presented a threat of violence. Even this outlandish theory is unsupported by the record. The evidence of threatened violence consists merely of testimony that a crowd was outside, that violence had occurred within the previous week, that the air was electric with excitement, that a few white toughs had poured coffee on the counter seats, that an "outburst" was heard when petitioners sat down, and that military and civilian authorities believed that arrests were necessary to preserve the peace.

No one testified as to the behavior of the crowd. Not a single incident of violence or unruly conduct was cited. There is no evidence that any person in the crowd even said anything critical of the petitioners or toward incitement of others in the crowd. Moreover, there was solid, undisputed evidence that over one hundred armed National Guardsmen were present on the scene, that they were well deployed to control the situation, and that order had been maintained since the military authorities had assumed control. It was also shown conclusively that under very similar circumstances this lunch counter had been desegregated without incident on the day before, and that the petitioners were not even asked by the authorities to refrain from using the lunch counter.

Conviction on such a record violates due process of law under the rule of *Thompson* v. *Louisville*, 362 U. S. 199. The testimony was too speculative and remote to constitute any evidence of a probable disturbance that could not be handled with ease by the authorities on the scene. As in *Garner* v. *Louisiana*, 368 U. S. 157, and *Taylor* v. *Louisiana*, 370 U. S. 154, the evidence established merely that petitioners were peacefully exercising their lawful rights in violation of a local custom of segregation. In the *Taylor* case there was evidence that onlookers became restless and some

climbed on chairs, but that could not ground a conviction for breach of the peace.

Assuming, however, that the state had amply proved its contention that petitioners were playing with dynamite by ordering a cup of coffee, these convictions still could not stand. The issue of threatened violence by those who oppose the constitutional rights of others is not properly in the case. As this Court said last term in *Wright* v. *Georgia*, 373 U. S. 284, 293, "the possibility of disorder by others cannot justify exclusion of persons from a place if they otherwise have a constitutional right (founded upon the Equal Protection Clause) to be present." [Citing *Taylor* v. *Louisiana, supra, Garner* v. *Louisiana, supra,* and *Buchanan* v. *Warley,* 245 U. S. 60]. Numerous other decisions of this Court and others squarely establish the principle that the wrongful conduct of one person or group cannot be used as a pretext for denying the constitutional rights of others. *Cooper* v. *Aaron,* 358 U. S. 1, *affirming,* 257 F. 2d 33, 38-39 (8th Cir. 1958); *Watson* v. *City of Memphis,* 373 U. S. 526. As Judge Brown of the Fifth Circuit wrote recently,

> . . . liberty is at an end if a police officer may without warrant arrest, not the persons threatening violence, but those who are its likely victims merely because the person arrested is engaging in conduct which, though peaceful and legally and constitutionally protected, is deemed offensive and provocative to settled social customs and practices. When that day comes . . . the exercise of [First Amendment freedoms] must then conform to what the conscientious policeman regards the community's threshold of intolerance to be. *Nesmith* v. *Alford,* 318 F. 2d 110, 121 (1963).

Without basing petitioners' guilt on the threat of wrongful action by others, the state has no case at all. Its evi-

dence shows only that petitioners peacefully sought service at a lunch counter, and this falls far short of establishing a breach of the peace.

The relevant portion of Alabama's statute condemns "any person who disturbs the peace of others . . . by conduct calculated to provoke a breach of the peace." Previous constructions of the statute shed no light on its meaning.[8] A normal interpretation would limit its applicability to situations in which 1) the peace of others was actually disturbed, and 2) the action of the accused was in some way offensive or wrongful, even if not calculated or intended to create a disturbance. Even the broad interpretations often given to the term breach of the peace, *e.g. Cantwell* v. *Connecticut*, 310 U. S. 296, *Edwards* v. *South Carolina*, 372 U. S. 229, do not eliminate the necessity of some type of wrongful, offensive or incitatory conduct.

Unless injury to the delicate sensibilities of those who oppose integration can be considered an actual disturbance of the peace, this record lacks any evidence of this essential element of the offense, and the rule of *Thompson* v. *Louisville* clearly applies. Likewise, there is no evidence of any wrongful conduct by petitioners. Here, as in *Wright* v. *Georgia*, 373 U. S. 284, 285, "The record is devoid of evidence of any activity which a breach of the peace statute might be thought to punish."

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8 The only Alabama case approaching a construction of the 1959 statute (Tit. 14, §119(1)) is *Mitchell* v. *State*, 130 So. 2d 198 (Ala. App. 1961), *cert. denied*, 130 So. 2d 204 (Ala. Sup. Ct.). In that case a conviction was reversed because the complaint, which alleged merely that the defendant engaged in "conduct calculated to provoke a breach of the peace", was held to be too vague. It was further declared that the evidence, showing only that the defendant walked in front of complainants with his hands in his pockets and acted "strutty", was insufficient to make out an offense, even if well pleaded.

Thus, whether or not the "evidence" of threatened violence is considered, this case is governed by *Thompson* v. *Louisville, supra, Garner* v. *Louisiana, supra,* and *Taylor* v. *Louisiana, supra.*

B. *Unlawful Assembly*

Title 14, Section 407 makes it a crime when "two or more persons meet together to commit a breach of the peace, or to do any other unlawful act. . . ." Clearly, there is no evidence in this record of a breach of the peace as that term is normally understood. Nor is there any evidence whatever of the commission of any other unlawful act. Thus, the applicability of *Thompson* v. *Louisville, supra,* seems undeniable.

Conceivably, the state could reason that, notwithstanding any normal or reasonable interpretation of "breach of the peace", petitioners' convictions under the breach of the peace statute conclusively establish that they committed a breach of the peace while assembled. This, of course, would give rise to the objection that the unlawful assembly statute is unconstitutionally vague (see Section II, *infra*).[9] Regardless of that, the argument in Section I-A above demonstrates that there was no evidence of breach of the peace, no matter how broadly the breach of the peace statute is construed.

The convictions under both the breach of the peace and the unlawful assembly laws share an additional infirmity which is related to the no evidence claim—e.g. that the petitioners' conduct, which is here attempted to be made criminal, was induced by state officers. The action of the military officials in escorting petitioners to the bus terminal and

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9 Furthermore, as to petitioner Walker, he was not even charged with breach of the peace.

then arresting them for being there and using the public facilities was comparable to an entrapment. By escorting petitioners, permitting them access to the "white" waiting room, and not warning them they should not use the lunch room or behave in any particular way, the military authorities impliedly asserted that they had the situation in hand and that petitioners could exercise their rights without any restriction imposed because of the presence of a crowd outside the terminal. Thus petitioners' alleged "crime" was the product of the "creative activity" of state officers in leading the petitioners to believe that they could freely use the terminal facilities. *Cf. Sherman* v. *United States,* 356 U. S. 369, 372. It "offends a sense of justice," *cf. Rochin* v. *California,* 342 U. S. 165, 173, that state officers should be permitted to induce an act to be done and then punish it as criminal. Whether the criminal law rule as to entrapment need be made a due process matter generally is not necessary to decide. It is sufficient that here the state-induced activity is conceded to be an activity that is generally lawful. The only claim of illegality results from the alleged special circumstances pertaining to the crowd outside the terminal, which were known to the state authorities when they escorted petitioners to the terminal and did not warn them that any such extraordinary limitations would be placed upon their actions.

II

The State Statutes, as Construed and Applied to Convict Petitioners, Are So Vague, Indefinite and Uncertain as to Offend the Due Process Clause of the Fourteenth Amendment.

A. *Breach of the Peace*

Conviction of petitioners under the provisions of a statute outlawing "conduct calculated to provoke a breach of the peace" is blatantly unfair. As construed and applied to petitioners, this vague statute violated due process of law.

It has been established that petitioners, under the protection of state authorities, peacefully entered a bus terminal, bought tickets to an out-of-state destination and ordered coffee at the lunch counter. They had every reason to believe that their actions would be protected (R. A. 186, 211). They were not refused service (R. A. 184). They were not asked to move away from the counter, nor were they warned that their actions were considered dangerous (R. A. 96, 139-140, 186, 211). Others had done precisely the same thing on the day before without being arrested (R. A. 95, 135, 206, 223).

Under these circumstances, they were arrested under a broad, general, and vague statute. The Court of Appeals construed the statute to mean that no actual disturbance of the peace was necessary; that no specific intent to breach the peace was necessary; that violent, profane, indecent, offensive, or boisterous conduct was immaterial (R. A. 486; appendix, *infra*, p. 11a).

The court's holding means that whenever a person or group performs an innocent and lawful act in the presence of others who might object to the doing of that act, they can

be convicted under this statute. It means that the exercise of constitutional rights in Alabama is subject to the irrational and unlawful actions of others and to the unbridled discretion of the arresting officer to determine whether potential lawbreakers present a threat of disorder which justifies suppression of inherently innocent conduct.

Surely the statute never warned petitioners that such was the case. No previous construction of Alabama courts gave the statute such a broad interpretation.[10] In this case the Court of Appeals relied completely on out-of-state authorities for its construction of the statute (R. A. 486; appendix, *infra*, p. 11a). Moreover, it misconstrued those authorities by accepting the proposition that completely innocent acts are punishable as breaches of the peace when such was never intended to be the law despite broad definitions of breach of the peace.[11]

It is clear that a hypothetical precise law providing "it shall be unlawful for any person or group to violate accepted customs of racial segregation at bus terminal lunch counters when in the opinion of law enforcement officers on the scene such violation would tend to excite unruly crowds in the vicinity" could not (because of the equal protection clause) reach petitioners' conduct. *Cf. Cooper* v. *Aaron*, 358 U. S. 1. But even if this proposition were doubtful, it is manifest that a vague statute cannot provide the basis for such a criminal prosecution. *Wright* v. *Georgia*, 373 U. S. 284; *Edwards* v. *South Carolina*, 372 U. S. 229; *Garner* v. *Louisiana*, 368 U. S. 157, 198 (concurring opinion); *Cantwell* v. *Connecticut*, 310 U. S. 296.

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10 See note 6, *supra*.

11 Citing 8 Am. Jur., Breach of the Peace, §3, p. 834, the Court of Appeals quoted broad language, but omitted to mention that in the same paragraph that authority assumes that actionable conduct must be "unjustifiable or unlawful" or "wicked."

This Court has often held that criminal laws must define crimes sought to be punished with sufficient particularity to give fair notice as to what acts are forbidden. As was held in *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453, "no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what crimes are forbidden." See also, *United States* v. *L. Cohen Grocery*, 255 U. S. 81, 89; *Connally* v. *General Const. Co.*, 269 U. S. 385; *Raley* v. *Ohio*, 360 U. S. 423. The statutory provision applied to convict petitioners in this case is so vague that it offends the basic notions of fair play in the administration of criminal justice that are embodied in the due process clause of the Fourteenth Amendment.

Moreover, the statute punished petitioners' protest against racial segregation practices and customs in the community; for this reason the vagueness is even more invidious. When freedom of expression is involved the principle that penal laws may not be vague must, if anything, be enforced even more stringently. *Cantwell* v. *Connecticut*, 310 U. S. 296, 308-311; *Scull* v. *Virginia*, 359 U. S. 344; *Watkins* v. *United States*, 354 U. S. 178; *Herndon* v. *Lowry*, 301 U. S. 242, 261-264.

B. *Unlawful Assembly*

The same reasoning and authorities apply to the convictions for unlawful assembly. Title 14, Section 407 is hopelessly vague, condemning as it does not only a meeting of two or more persons "to commit a breach of the peace", but also a meeting to do "any other unlawful act."

"Breach of the peace" normally refers to some type of boisterous, violent or otherwise blameworthy conduct; but there was no evidence of any such actions by petitioners. No prior construction of this law by the Alabama courts

warned that the law applied to purely innocent activity which might provoke others to unlawful acts of opposition, and surely the text of the law gives no hint that it is subject to such a construction. Thus, the law fails to provide any standard of criminality to guide a judge or jury in applying it, and is patently subject to capricious enforcement.

The second clause of the law punishing a meeting "to commit any other unlawful act" might have almost limitless applicability. But except for the breach of peace charges, the record in this case indicates no contention by the state that petitioners' action was unlawful. It is evident that this clause, like the others discussed above, fails to provide any warning that a legally and constitutionally protected activity—sitting in an integrated group at a bus station lunch counter formerly reserved for whites only—can be punished as unlawful.

Moreover, as petitioners were charged under the alternative words of the statute, to this day, they cannot know whether the state claims that they met to commit a breach of the peace or met to commit some other unlawful act. If either of the statutory clauses is unconstitutionally vague, the conviction under this law must be reversed for it cannot be known which part was relied upon by the trial or appellate courts, *Stromberg* v. *California,* 283 U. S. 359; *Thomas* v. *Collins,* 323 U. S. 516; *Williams* v. *North Carolina,* 317 U. S. 387.

III

The Arrests and Convictions of Petitioners on Charges of Breach of the Peace and Unlawful Assembly Constitute Enforcement by the State of the Practice of Racial Segregation in Bus Terminal Facilities Serving Interstate Commerce, in Violation of the Equal Protection Clause of the Fourteenth Amendment, the Commerce Clause of the Constitution, and 49 U. S. C. §316(d).

This is an uncomplicated case of state enforcement of segregation. Unlike several trespass cases brought before this Court, there is no problem of private property rights or private judgment, for the lunch counter operator here was under a statutory duty to serve petitioners, *Boynton* v. *Virginia*, 364 U. S. 454, and he acknowledged that duty by serving them (R. A. 184). The arrests were ordered and executed by agents of the state who made no pretense of responding to private choice.

Petitioners contend that no amount of evidence could justify the state's action on the ground that innocent and protected conduct could lead to violence by others (see Section I, *supra*). However, that issue need not be faced, because petitioners were arrested for the purpose of enforcing segregation in the terminal facilities. Judge Johnson so found in *Lewis* v. *Greyhound Corp.*, 199 F. Supp. 210 (M. D. Ala. 1961), *supra* p. 7, and the record here is clear.

A large force of military and civilian law enforcement officers was posted both inside and outside the terminal (R. A. 77, 111, 121-23, 132). The crowd outside was under control (R. A. 121-23), and the persons who poured coffee on the counter seats were swiftly apprehended (R. A. 133). Col. Poarch testified that dispersing the crowd was not considered (R. A. 135). It had been allowed to form al-

though petitioners gave the military command advance notice of their departure plans (R. A. 129). Gen. Graham admitted his anger at the actions of petitioners (R. A. 208), which could well explain his failure to warn them of the peril they supposedly created by sitting down. No effort was made to offer petitioners protection if they would leave the terminal and delay their trip until a quieter time.

The authorities of the State of Alabama chose none of these alternatives, but summarily arrested the racially integrated group that was violating its customs. This, of course, was in direct contrast to the failure to arrest the persons who poured coffee on the seats.

When a state enforces the practice of racial segregation in facilities serving interstate commerce by its administration of the criminal law, it denies equal protection of the laws. *Bailey* v. *Patterson*, 369 U. S. 41; *Turner* v. *Memphis*, 369 U. S. 350; *Gayle* v. *Browder*, 352 U. S. 903, affirming, 142 F. Supp. 707 (M. D. Ala. 1956); *Baldwin* v. *Morgan*, 287 F. 2d 750 (5th Cir. 1961); *Boman* v. *Birmingham Transit Co.*, 280 F. 2d 531 (5th Cir. 1960); cf. *Shelley* v. *Kraemer*, 334 U. S. 1; *Yick Wo* v. *Hopkins*, 118 U. S. 356.

This use of the state's machinery also conflicts with the statute forbidding discrimination in facilities operated by interstate motor carriers, 49 U. S. C. §316(d); *Boynton* v. *Virginia*, 364 U. S. 454, and constitutes an unlawful burden on commerce in violation of Article I, Section 8 of the Constitution, *Morgan* v. *Virginia*, 328 U. S. 373.

The reasoning in this Section is equally applicable to the convictions for breach of the peace and for unlawful assembly.

IV.

The Decision Below Conflicts With Decisions of This Court Securing the Fourteenth Amendment Right to Freedom of Expression, Assembly and Religion.

By taking seats at the lunch counter in the Trailways Bus Depot, petitioners were exercising not only their right to use interstate transportation facilities unfettered by racial restrictions, but also the rights guaranteed by the First Amendment. Freedom of expression is not limited to verbal utterances. It covers picketing, *Thornhill* v. *Alabama*, 310 U. S. 88; free distribution of handbills, *Martin* v. *Struthers*, 319 U. S. 141; display of motion pictures, *Burstyn* v. *Wilson*, 343 U. S. 495; joining of associations, *NAACP* v. *Alabama*, 357 U. S. 449; the display of a flag or symbol, *Stromberg* v. *California*, 283 U. S. 359. More in point, Justice Harlan recognized that sitting in at a segregated lunch counter in a southern state is a non-verbal form of expression protected by the Fourteenth Amendment. *Garner* v. *Louisiana*, 368 U. S. 157, 185 (concurring opinion). Several of the petitioners were ministers, professors of religion and students of theology, and all considered racial segregation as contrary to their religious beliefs.

Because the petitioners' right to be in the terminal and to use the lunch counter is unquestioned, no issue is presented as to the propriety of engaging in public expression in a place where one is not invited. *Garner* v. *Louisiana*, 368 U. S. 157, 185 (concurring opinion).

Petitioners had the right to express their views unless their conduct was "likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or arrest." *Terminiello* v. *Chicago*, 337 U. S. 1, 4. "A state may not unduly suppress

free communication of views, religious or other, in the guise of conserving desirable conditions," *Cantwell* v. *Connecticut*, 310 U. S. 296, 308.

In the *Cantwell* case, where the defendant was expressing unpopular views that angered his listeners to the point of specific threats of violence, this Court reversed the conviction for common law breach of the peace. Justice Roberts wrote, "We have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application." *Id.* at 308. Therefore, ". . . in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioners' communication, considered in the light of the constitutional guaranties, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question." *Id.* at 311. See also, *Garner* v. *Louisiana*, 368 U. S. 157, 185, 199-204 (Harlan, *J.*, concurring).

In *Edwards* v. *South Carolina, supra*, a large crowd had gathered to observe the marching of almost two hundred Negro students protesting to the Legislature against racial discrimination and segregation. The Court, through Justice Stewart, relied heavily on the fact that "there was no evidence to suggest that onlookers were anything but courteous and no evidence at all of any threatening remarks, hostile gestures or offensive language on the part of any member of the crowd." 372 U. S. at 231. This record, of course, is identical in these respects.

With respect to the actions of the demonstrators, in *Edwards* a huge group of demonstrators were present.

They sang and chanted after refusing to disperse upon command by the city officials who had allowed them to demonstrate unmolested for forty-five minutes. Here, petitioners merely sat down at a lunch counter. The Court's reasoning in *Edwards* is applicable here:

> "We did not review in this case criminal convictions resulting from the even-handed application of a precise and finely drawn regulatory statute defining a legislative judgment that certain specific conduct be limited or proscribed. . . . These petitioners were convicted of an offense so generalized as to be . . . 'not susceptible of an exact definition.' And they were convicted upon evidence which showed no more than that the opinions which they were peaceably expressing were sufficiently opposed to the views of the majority of the community to attract a crowd and necessitate police protection." 372 U. S. at 236-37.

This case is not to be compared with *Chaplinsky* v. *New Hampshire,* 315 U. S. 568, where the speaker used fighting words, nor *Feiner* v. *New York,* 340 U. S. 315, where the evidence showed that the crowd was pushing, shoving, and milling around and that the speaker passed the bounds of argument or persuasion. This is a clear case of state interference with First Amendment freedoms in violation of the Fourteenth Amendment. *Gitlow* v. *New York,* 268 U. S. 652; *Whitney* v. *California,* 274 U. S. 357; *Stromberg* v. *California,* 283 U. S. 359.

The reasoning in this Section is equally applicable to the convictions for breach of the peace and for unlawful assembly.

V

The Courts Below Deprived Petitioners of Due Process and Violated the Supremacy Clause by Refusing to Accept the Federal District Court Finding That Petitioners Were Arrested to Enforce Racial Segregation.

The trial court erroneously excluded appellants' exhibit which contained the findings in the *Lewis* case that the arrests of appellants were solely to enforce segregation (R. A. 9, 12-13). If this character of the arrests were established in this case it would be a complete defense to the state's charges of disorderly conduct and unlawful assembly, *Boynton* v. *Virginia, supra.*

The federal district court rendered a determination that petitioners, in the exact circumstances which form the basis of the state's prosecution, were in the exercise of a federal right granted by statute, and that the arrests by the state were unconstitutionally designed to enforce segregation. To refuse to give conclusive effect to the declaration of federal rights both statutory and constitutional by a competent federal court is to nullify those rights in violation of the supremacy clause (Article VI) of the United States Constitution.

This state court action violates the due process clause of the Fourteenth Amendment. The Restatement of Judgments, Section 68(1) states, with regard to collateral estoppel, that ". . . where a question of fact essential to the judgment is actually litigated and determined by a valid and final judgment, the determination is conclusive between the parties in a subsequent action on a different cause of action." The rule has been applied in criminal cases, *United States* v. *Oppenheimer,* 242 U. S. 85; *Sealfon* v. *United States,* 332 U. S. 575, and was designed to elimi-

nate harassment of defendants and the inconsistent results of duplicatory litigation as in this case. The "doctrine of collateral estoppel is not made inapplicable by the fact that this is a criminal case, whereas the prior proceedings were civil in character." *Yates* v. *United States,* 354 U. S. 298, 335. For the court below to decline to apply a doctrine grounded in consideration of basic fairness, deprives the appellants of due process of law.

Wolfe v. *North Carolina,* 364 U. S. 177, presented a situation paralleling that here. In that case, however, the court did not reach the constitutional issue because the petitioners had failed to present the issue to the state court on appeal. Petitioners here have made the necessary proffer of the federal proceedings and duly excepted to their being struck from the evidence (R. A. 161-164). *Hoag* v. *New Jersey,* 356 U. S. 464, is also no bar to appellants' claim of denial of due process of law, for there the issues and parties were not the same. Hoag and other defendants were acquitted in their first trial of robbing three persons in a tavern. It was held valid to try them a second time on a charge of having robbed a fourth person, present in the tavern, who had not been named in the first indictment. In the instant case there was substantial identity of parties. The criminal case was prosecuted in the name of the state by the Circuit Solicitor who was a defendant in the federal court case along with the State Attorney General. The issue of whether the arrests were designed to enforce segregation is common to both proceedings.

CONCLUSION

Review by this Court is particularly appropriate in a case such as this where a federal court has once deferred to the state courts despite a clear finding that the arrests were to enforce segregation. This it is submitted is a compelling case for review, not only because the error below is so manifest, but also because the entire federal system is jeopardized if a state can successfully defeat the plain rights of citizens under the Constitution by such a gross distortion of its criminal laws.

It is respectfully submitted that the petition should be granted.

Respectfully submitted,

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APPENDIX

Opinion of Court of Appeals in the *Abernathy* Case

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

October Term, 1962-63

3 Div. 101

RALPH D. ABERNATHY

—v.—

STATE

APPEAL FROM MONTGOMERY CIRCUIT COURT

PRICE, *Presiding Judge*:

The appellant and ten other persons were convicted in the court of common pleas of Montgomery County. In the circuit court, by agreement, the cases were considered as being tried separately, but evidence was introduced only in the Abernathy case and was considered as introduced in all the cases. There was a separate judgment of conviction as to each defendant.

On appeal to this court it is stipulated that the transcript of the testimony be copied into the record in this case only, and be considered a part of the record in each of the other cases, without the necessity of copying it into the record of each of said cases.

The statutes under which the defendant was charged provide:

"Title 14, Sec. 407: If two or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall, on conviction, be punished, at the discretion of the jury, by fine and imprisonment in the county jail, or hard labor for the county for not more than six months."

"Title 14, Section 119(1): Any person who disturbs the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred ($500.00) or be sentenced to hard labor for the county for not more than twelve (12) months, or both, in the discretion of the court."

The evidence shows the eleven appellants involved in these appeals are four white men and seven Negroes. On May 24, 1961, the City of Montgomery was under martial law as the result of riots following the arrival at the Greyhound Bus Station on Saturday, May 20th, of three groups of so-called "Freedom Riders." A race riot occurred on Sunday night in the vicinity of the church of which the appellant Abernathy was the pastor, in which riot several thousand persons participated. Some of these appellants, including Abernathy, were at the church during the riot. The racial situation in the city was extremely tense. Some fourteen hundred national guardsmen were on duty. The stores were being patrolled by armed convoys.

The first groups of Freedom Riders had been given a police escort to the Mississippi state line on the morning of the day this additional group, composed of seven of these appellants, arrived at the Greyhound Bus Station. The ex-

plosive atmosphere was heightened by their arrival, at a time when it was considered the city had passed its crisis. This group was met at the station by a hostile crowd of some two thousand persons. The crowd was unruly and bricks and stones were hurled at the automobile in which these persons were driven from the bus station.

The next morning a military convoy, under the command of Colonel Poarch of the Alabama National Guard, escorted the appellants from the home of appellant Abernathy to the Trailways Bus Terminal. This escort had been arranged by General Graham, who had asked appellants to contact his office when they desired to travel. The convoy proceeded directly from Abernathy's house to the bus station. Upon entering the station they went directly to the ticket window and some of them bought tickets to Jackson, Mississippi. From there they went to the lunch counter in the front portion of the room and began to occupy the seats at the counter.

The State's testimony tended to show that at this time some thirty persons were milling around inside the station, eighteen or more besides the appellants and the law enforcement officers, four or five hundred people were outside in the immediate vicinity of the station; and over a hundred law enforcement officers were stationed outside. In the front part of the station there were large plate glass windows and it was possible for the crowd outside to see inside the station; that when the appellants sat down at the lunch counter an outburst of noise was heard from the crowd outside. At this time Colonel Poarch directed the Sheriff of Montgomery County to arrest the defendants. Colonel Poarch testified he gave the arrest order because the air was electric with excitement and tension; that the crowd outside was hostile to these persons; that there was also a

number of people in the station that could have caused trouble or injury, not only to the defendants themselves, but also to innocent passersby or people who had no connection with either side of the trouble, as well as to the National Guardsmen, and it was his opinion the conduct of the defendants under the circumstances was calculated to provoke a breach of the peace.

For the defendants, William S. Coffin, Jr., Chaplain of Yale University, testified he first learned of racial violence in Montgomery from appellant MacGuire on May 21, 1961. As a result of such information and a sermon he had preached, he along with four other appellants, MacGuire, Noyce, Smith and Swift, three of whom are white men and one a Negro decided to come to Montgomery. They flew to Atlanta and were joined there for the bus trip to Montgomery by appellants Carter and Jones, who are Negroes. They spent the night in Montgomery and the seven travelers decided to proceed to Jackson, Mississippi. Appellants Shuttlesworth, Lee, Abernathy and Walker, Negroes, accompanied them to the bus terminal. They were provided heavy military escort to the terminal. Upon arrival at the station they were ushered into the white waiting room and they went directly to the ticket window and seven of the appellants purchased tickets to Jackson, Mississippi. Shortly after leaving the ticket window they seated themselves at the lunch counter and ordered and were served coffee. At this point they were placed under arrest by the Sheriff. They were given no warning that they were not to sit at the counter. That it was not possible to see persons in the lunchroom from outside through the tinted glass windows; that when he left Abernathy's house it was his intention to seek service at the terminal on a racially integrated basis.

Donald Martin, Alabama News Manager, United Press International, testified that on the day previous to appellant's arrest a racially mixed group used the facilities of the white waiting room at the Trailways Bus Terminal. There were no incidents and they were not arrested. At that time there was a crowd of approximately two hundred fifty to three hundred fifty persons on streets surrounding the bus terminal; that it was not possible to discern the race of persons at the lunch counter when looking through the glass from outside; that he was not in the terminal on the day appellants were arrested.

General Henry Graham, Adjutant General of Alabama, was called as a witness by the defendants. He testified he was present when the defendants were arrested. He was asked if he had occasion to make public comment on the arrests shortly after they were made. The court sustained the State's objection to any statement he may have made after the arrest, on the ground the defendant could not be allowed to impeach his own witness.

The witness testified that on May 24th, he was in charge of the military situation in Montgomery; that on that day two bus loads of passengers elected to leave for Jackson, Mississippi, and military escort was provided for the buses to the Mississippi State line; that he read in the newspapers that the passengers ate in racially mixed groups at the lunch counter before boarding their buses, but that he was not in the bus station at the time and he accompanied the first bus load; that no traveler had been arrested until these defendants were arrested; that he first heard these defendants were enroute to Montgomery from Atlanta when he was at the Mississippi line and he turned the military party back to Montgomery rather rapidly and some of the force reached Montgomery at the same time these seven travelers arrived there from Atlanta; that he was present in the bus

terminal the next morning when these defendants were arrested; that he was provoked, was irritated and was angry because of the danger in which this incident had placed his men and the people of the community, but they were not arrested because he was angry, and it was not anger that led to his changing his method of dealing with the Freedom Riders; that whether he would have ordered the arrest of the first travelers who ate as a racially mixed group if he had been present would have depended upon the situation at that particular time; that he had made the statement that these defendants wanted to be arrested and "we have accomodated [sic] them."

The prosecutions were begun in the Common Pleas Court by affidavit. The affidavit charged that this defendant, on or about May 25, 1961, "did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule and did wilfully and intentionally attempt to test segregation laws and customs by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery.

COUNT II

"Ralph D. Abernathy did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama."

In the circuit court Count 1 of the complaint filed by the solicitor charged that defendant, "did disturb the peace of

others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group, at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel; • • • ."

Count II of said compaint charged that defendant "did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and police personnel • • • ."

The defendant filed a motion to quash the affidavit, warrant and complaint on the grounds that by the issuance of the affidavit and complaint the defendant was denied the rights guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, and Article 1 Section 6 of the Constitution of Alabama 1901, in that he was deprived of freedom of speech, religion, travel and association; his arrest was designed to perpetrate racial segregation and was thus a denial of equal protection of law and that the charges against him were so vague as to amount to

a denial of due process of law. The defendant further alleged that he was deprived of the right of unsegregated use of travel facilities guaranteed by the Interstate Commerce Act (part II, Sec. 216 (d), Title 49, U. S. C. A., Sec. 316 (d)) and that an imposition of racial segregation on interstate travelers is an undue burden on interstate commerce in violation of Article I, pp. 8 of the Constitution of the United States. The court overruled the motion to quash.

The defendant then interposed a demurrer to the affidavit, warrant and complaint. The demurrer raised all the objections made under the motion to quash and further averred that the allegations of the affidavit, warrant and complaint, and the statutes upon which they are based, are so vague, indefinite and uncertain as not to apprise the defendant of the nature and cause of the accusation against him; that no offense is alleged; that the complaint was drawn in the alternative and that there was a fatal variance between the affidavit and complaint. The demurrer was overruled.

After the presentation of the state's case, and before putting on his defense, the defendant moved to exclude the state's evidence on the grounds that to convict him under the evidence adduced would deprive him of his constitutional rights of due process of law. The motion to exclude was denied.

Sections 232 and 236 of Title 15, Code of Alabama 1940, provide:

> "232. The indictment must state the facts constituting the offense in ordinary and concise language, without prolixity or repetition, in such a manner as to enable a person of common understanding to know what is intended, and with that degree of certainty which will enable the court, on conviction to pronounce the proper judgment; * * *."

"236. Where a statute creating or defining an offense uses special or particular terms, an indictment on it may use the general term which, in common language, embraces the general term."

In *Nailer* v. *State*, 18 Ala. App. 127, 90 So. 131, the court said:

"This complaint when filed becomes the charge against the defendant, based, of course, upon the original affidavit. • • • The plea or demurrer of defendant is to the complaint as filed by the solicitor, and not to the original affidavit, unless the original affidavit is void and charges no offense in which event the motion should be to quash."

The solicitor's complaint was framed in the language of Sections 119(1) and 407 of Title 14, Code, the statutes which define the offenses, and specifies the particular conduct alleged as constituting the offense with sufficient clearness to apprise the defendant of the charge against him and to enable the court to pronounce the proper judgment. See *Mitchell* v. *State*, —— Ala. App. ——, 130 So. 2d 198.

We are of the opinion the affidavit here was not void, but that it was sufficient to authorize the issuance of the warrant and furnished sufficient foundation for a prosecution to conviction upon the solicitor's complaint. *Miles* v. *State*, 94 Ala. 106, 11 So. 403.

It is provided by Section 247, Title 15, Code 1940 that, "when the offense may be committed by different means • • • such means • • • may be alleged in the same count in the alternative."

We find no merit in the defendant's contention that there was a fatal variance between the affidavit and the complaint

in that the affidavit alleged in the alternative that defendant disturbed the peace of others "by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace", while the complaint only charged a disturbance of the peace "by conduct calculated to provoke a breach of the peace."

We are further of the opinion that the statutes creating the offenses of unlawful assembly, Sec. 407, Title 14, and breach of the peace, Sec. 119(1), Title 14, Code, supra do not, either in themselves or as construed and applied to this defendant, abridge the right of free speech and assembly guaranteed by the First Amendment to the Constitution of the United States, nor has he been denied the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 6, Constitution of Alabama.

The motion to quash the demurrer, and the motion to exclude the evidence were properly overruled.

There was no error in the court's refusal to allow the defendant to cross-examine General Graham, or in refusing to allow the introduction of a transcript of his testimony in a previous case in another court. A party cannot impeach or discredit his own witness by introducing proof of prior inconsistent statements. *Woods* v. *State*, 38 Ala. App. 582, 90 So. 2d 92; *Ruffin* v. *State*, 30 Ala. App. 344, 6 So. 2d 455; *Duncan* v. *State*, 20 Ala. App. 209, 101 So. 472.

> "An unlawful assembly is an assembly of three or more persons, (Our statute has reduced the minimum number of participants to two.) who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled, as to cause persons in the neighborhood of such assembly

to fear on reasonable grounds that the persons so assembled would commit a breach of the peace or provoke others to do so." *2 Wharton's Criminal Law*, Sec. 853, p. 721; *Shields* v. *State*, 184 Wis. 448, 204 N. W. 486, 40 ALR 945; *Aron* v. *Wasau*, 98 Wis. 592, 74 N. W. 354.

"In general terms a breach of the peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence or tending to provoke or excite others to break the peace." *Shields* v. *State*, supra. 8 Jr. Sec. 3 p. 834.

The appellant urges that the evidence was insufficient to support a conviction for the failure of the state to prove criminal intent; to prove that appellant's conduct did in fact provoke or threaten to provoke a breach of the peace; to prove that appellant's conduct was "violent, profane, indecent, offensive or boisterous"; to prove that appellants had knowledge their acts would or might provoke others to a breach of the peace.

No specific intent to breach the peace is essential to a conviction for a breach of the peace. *State* v. *Cantwell*, 126 Conn. 1, 8A 2d 533; *Cantwell* v. *Connecticut*, 310 U. S. 296, 60 S. Ct. 900, 84 L. Ed. 1213; 128 ALR 1352. Nor is it necessary to constitute the offense of a breach of the peace that the proof show the peace has actually been broken. *People* v. *Kovalchuck*, 68 N. Y. S. 2d 165; *People* v. *Ripke*, 115 N. Y. S. 2d 590.

The solicitor's complaint became the charge in the circuit court. There was no averment that the conduct of appellant was "violent, profane, indecent, offensive, or boisterous," and without such averment proof of such fact was not required.

Opinion of Court of Appeals in the Abernathy Case

The question of whether certain conduct constitutes a breach of the peace depends largely upon the facts of each particular case and the circumstances surrounding the incident. An act which would be lawful in some circumstances may amount to a breach of the peace if done under other circumstances.

The incident occurred during a period of great public excitement. The evidence shows that this defendant was aware of the tenseness of the situation and the temper of the crowd. We think it could not conceivably be said that he did not have knowledge that his conduct was calculated to incite a breach of the peace.

The judgment of the court in an action tried without a jury is entitled to the same weight as the verdict of a jury, and will not be disturbed on appeal unless plainly contrary to the great weight of the evidence. 6 Ala. Dig. Criminal Law 260(11). Under the facts and circumstances adduced we think the question of whether the defendant's conduct was reasonably calculated to provoke a breach of the peace was one for the trier of fact. The evidence was sufficient to sustain the judgment of the trial court.

AFFIRMED.

CATES, *J.* (dissenting):

I must respectfully dissent because, to me, at the trial below, the State did not prove beyond a reasonable doubt that there was a clear and imminent danger of a breach of the peace.

These defendants came to the bus station in protective custody of the militia, i.e., voluntarily escorted for their own safety. To say that as interstate travelers they had a "right" to eat black and white side by side at the bus sta-

tion lunch counter, may not be a precise statement. Under *Boynton* v. *Virginia*, 364 U. S. 454, the federal courts call it "unjust discrimination" not to let them so eat.

Has a state a duty to protect a person in the doing of an act which it may not restrain?

As I read the evidence[1] there was not proof beyond a reasonable doubt that *the sitting down at the lunch counter* caused the crowd to gather at the bus station. Nor was there any evidence of even so much as an assault (in legal parlance) at a militiaman. See *Ellis* v. *Pratt City*, 113 Ala. 541, 21 So. 206.

Holmes said no one has a right to yell "Fire" in a crowded theatre. I fail to see that what the defendants did here was that reckless. There may have been a lighted match, but was there—beyond a reasonable doubt—an open powder keg?

---

1 I am not unmindful of the various witnesses testifying as to "tension," "electric atmosphere" and "noise" from the crowd. These to me are subjective expressions under the elements of the offense charged. The evidence shows no overt act manifesting the potentiality of the crowd nor the capability of the militia for force and arms.

Order of Affirmance of the Court of Appeals in the *Abernathy* Case

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

October Term, 1962-63

3 Div. 101

RALPH D. ABERNATHY

—v.—

STATE

APPEAL FROM MONTGOMERY CIRCUIT COURT

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

Order of Affirmance of the Court of Appeals in the *Carter* Case*

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE ALABAMA COURT OF APPEALS

October Term, 1962-63

3 Div. 102

CLYDE CARTER

—v.—

STATE

APPEAL FROM MONTGOMERY CIRCUIT COURT

February 14, 1962

Transcript filed.

May 10, 1962

Come the parties by attorneys, and argue and submit this cause for decision.

October 23, 1962

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed, on authority of *Abernathy* v. *State*, 3 Div. 101, Ala. App. Ms., this day decided. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

(NO OPINION)

* The order of affirmance is identical in all other cases except *Abernathy*.

Order of the Court of Appeals Denying Rehearing*

November 6, 1962

APPLICATION FOR REHEARING

To the Honorable Judges of the Court of Appeals:

Now comes the Appellant, by and through his Attorneys of Record, and moves this Honorable Court to grant him a rehearing in his cause, and to revise, reverse and hold for naught the Judgment of this Court rendered therein on the 23rd day of October, 1962, affirming the Judgment of the Circuit Court of Montgomery County, Alabama; and Appellant further moves this Honorable Court to withdraw the execution of its Certificate of Judgment rendered therein, pending a ruling on this, his motion for rehearing.

Respectfully submitted,

FRED D. GRAY
SOLOMON S. SEAY, JR.
JACK GREENBERG
LOUIS H. POLLAK

November 20, 1962

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

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* This order is identical in all cases.

Order of the Supreme Court of Alabama Denying Certiorari

THE STATE OF ALABAMA—THURSDAY, July 25, 1963

The Court met in Special Session pursuant to adjournment.

PRESENT: All the Justices.

PETITIONS FOR WRITS OF CERTIORARI TO THE COURT OF APPEALS

3 Div. 41
Ex parte: Ralph D. Abernathy, Petitioner
(Re: Ralph D. Abernathy v. State of Alabama)

3 Div. 42
Ex parte: Clyde Carter, Petitioner
(Re: Clyde Carter v. State of Alabama)

3 Div. 43
Ex parte: William S. Coffin, Jr., Petitioner
(Re: William S. Coffin, Jr. v. State of Alabama)

3 Div. 44
Ex parte: Joseph Charles Jones, Petitioner
(Re: Joseph Charles Jones v. State of Alabama)

3 Div. 45
Ex parte: Bernard S. Lee, Petitioner
(Re: Bernard S. Lee v. State of Alabama)

3 Div. 46
Ex parte: John David MaGuire, Petitioner
(Re: John David MaGuire v. State of Alabama)

3 Div. 47
Ex parte: Gaylord B. Noyce, Petitioner
(Re: Gaylord B. Noyce v. State of Alabama)

Order of the Supreme Court of Alabama Denying Certiorari

3 Div. 48
Ex parte: Fred L. Shuttlesworth, Petitioner
(Re: Fred L. Shuttlesworth v. State of Alabama)

3 Div. 49
Ex parte: George Smith, Petitioner
(Re: George Smith v. State of Alabama)

3 Div. 50
Ex parte: David E. Swift, Petitioner
(Re: David E. Swift v. State of Alabama)

3 Div. 51
Ex parte: Wyatt Tee Walker, Petitioner
(Re: Wyatt Tee Walker v. State of Alabama)

MONTGOMERY CIRCUIT COURT

Come the Petitioners in the above styled causes and the Petitions for Writs of Certiorari to the Court of Appeals being submitted on briefs and duly examined and understood by the Court,

IT IS ORDERED that the Writs of Certiorari be and each is hereby denied and the petitions dismissed at the cost of the petitioners for which costs let execution issue.

(No Opinions)

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 9

RALPH D. ABERNATHY, CLYDE CARTER, WILLIAM S. COFFIN, JR., JOSEPH CHARLES JONES, BERNARD S. LEE, JOHN DAVID MAGUIRE, GAYLORD B. NOYCE, FRED L. SHUTTLESWORTH, GEORGE SMITH, DAVID E. SWIFT, and WYATT T. WALKER,

Petitioners

v.

STATE OF ALABAMA,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 575

RALPH D. ABERNATHY, CLYDE CARTER, WILLIAM S. COFFIN, JR., JOSEPH CHARLES JONES, BERNARD S. LEE, JOHN DAVID MAGUIRE, GAYLORD B. NOYCE, FRED L. SHUTTLESWORTH, GEORGE SMITH, DAVID E. SWIFT, and WYATT T. WALKER,

Petitioners

v.

STATE OF ALABAMA,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

QUESTION PRESENTED

WHETHER PERSONS WHO, WITH FULL KNOWLEDGE OF A TENSE SITUATION, DELIBERATELY ENGAGE IN CONDUCT CALCULATED TO PROVOKE A BREACH OF THE PEACE, ARE CONSTITUTIONALLY IMMUNE FROM PROSECUTION FOR SUCH CONDUCT.

ARGUMENT

The Respondent respectfully contends that the Petition for a Writ of Certiorari should be denied. A person may be guilty of a breach of the peace if he commits any act or engages in any conduct inciting others to violence or to

break the peace, even though no such eventuality be intended. The evidence affirmatively established that at the time the petitioners arrived at the bus station under military escort, there were at least eighteen people other than the petitioners and law enforcement officers inside the station (R. 77); that four or five hundred people were outside the station but in the immediate vicinity (R. 77); that riots had broken out on the previous Saturday in the vicinity of another bus station (R. 79); that another riot had broken out on the previous Sunday in which over a thousand persons were involved (R. 81); that the latter riot occurred in the vicinity of the church of Rev. Ralph D. Abernathy, one of the petitioners in this case (R. 82); that the situation was extremely tense during this time with incidents of racial unrest (R. 128); that the people were hostile to the appellants (R. 131); that the appellants knew of the danger (R. 129); that it was possible for the crowd to see inside the station from the outside (R. 133); that the tension was increased when the petitioners took seats at the lunch counter (R. 133); and that an outburst of noise which grew louder was heard from the crowd outside when the group sat down at the lunch counter (R. 98, 103); that there was danger of injury, not only to the petitioners, but to innocent passers-by or people who had no connection with either side of this particular trouble, as well as to the National Guardsmen themselves (R. 134); that on the previous day, the petitioners had been met by a hostile crowd of some two thousand persons who had stoned the car in which they were riding (R. 143, 144); that the presence of the petitioners created the danger of provoking a riot and breach of the peace (R. 149), and this evidence was undisputed; that of the eleven petitioners, four of them, namely, Abernathy, Walker, Lee and Shuttlesworth, who are Negroes, were not interstate travelers at this time (R. 178); and that of the other seven, four who are white have no basis for claiming

their rights have been violated on account of race or color.

Under all the facts and circumstances existing at the time of the arrest of the petitioners, the petitioners knew or should have known that seating themselves as a mixed racial group at the lunch counter in full view of a tense and hostile crowd was calculated to cause violence or breach of the peace. The mere fact that they, themselves, did not engage in any violence, use profanity, or conduct themselves boisterously cannot excuse their conduct in the light of the surrounding circumstances, and such conduct amounted to a breach of the peace for which they were properly arrested, charged, tried, and convicted.

As was well said by Mr. Justice Roberts in *Cantwell v. Connecticut*, 310 U.S. 296, 308, 84 L.ed 1213, 1220, 128 ALR 1352, 1359:

> "The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions excitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious."

The principle was again well stated by Mr. Chief Justice Vinson in *Feiner v. New York*, 340 U.S. 315, 319, 95 L.ed 295, 299 where it was said:

> "We are not faced here with blind condonation by a State court of arbitrary police action. Peti-

tioner was accorded a full, fair trial. The trial judge had testimony supporting and contradicting the judgment of the police officers that a clear danger of disorder was threatened. After weighing this contradictory evidence, the trial court reached the conclusion that the police officers were justified in taking the action to prevent a breach of the peace. The exercise of the police officers' proper discretionary power to prevent a breach of the peace was thus approved by the trial court and later by two courts on review. The courts below recognized petitioner's right to hold a street meeting at this locality, to make use of loud-speaking equipment in giving his speech, and to make derogatory remarks concerning public officials and the American Legion. They found that the officers in making the arrest were motivated solely by a proper concern for the preservation of order and protection of the general welfare, and that there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions. Petitioner was thus neither arrested nor convicted for making or the content of his speech. Rather, it was the reaction which it actually engendered . . . . The findings of the New York Courts as to the condition of the crowd and the refusal of petitioner to obey the police request, supported as they are by the record in this case are persuasive that the conviction of petitioner for violation of public peace, order and authority does not exceed the bounds of proper state police action. This court respects, as it must, the interest of the community in maintaining peace and order on its streets."

In a concurring opinion appearing in 95 L.ed at page 280, Mr. Justice Frankfurter said of the police that:

"They interfered only when they apprehended imminence of violence. It is not a constitutional principle that, in acting to preserve order, the police

> must proceed against the crowd, whatever its size or temper, and not against the speaker."

Mr. Justice Frankfurter also said at page 279 that the Supreme Court:

> "Should not re-examine determinations of the State courts on 'those matters which are usually termed issues of fact.' And it should not overturn a fair appraisal of facts made by State courts in the light of their knowledge of local conditions."

The same principle should govern this Court in considering the present petition for certiorari.

An assembly of persons together for the effectuation of even a lawful purpose, by means such as would give rational, firm, and courageous persons in the neighborhood of the assembly a well-grounded fear of a breach of the peace, is an unlawful assembly. It is undisputed on the evidence in this case that some of the petitioners assembled together to ride buses through the State of Alabama, and to use all of the facilities which were an integral part of the bus station, knowing full well that their actions in doing so would give any rational, firm, and courageous persons in the neighborhood a well-grounded fear of a breach of the peace. Under the circumstances, this constituted an unlawful assembly. The futility of attempting for future guidance to adopt an inflexible definition of all circumstances and conditions which might arise in the course of human events to denominate an assembly as unlawful is obvious. As the Court said in *State v. Butterworth*, 104 N.J.L. 579, 142 AT. 57, 58 ALR 744, 748:

> "Each case largely and necessarily depends upon the object and character of the meeting, and whether or not the overt acts done by the participants therein,

> was pursuant to a common understanding, or of such a nature as to inspire well-grounded fear in persons of reasonable firmness and courage of a riot, rout, affray, or other breach of the public peace."

After discussing the case of *Reg. v. Graham*, 16 Cox C.C. 420, 46 Am.Jur. 128, that Court went on to say:

> "The legal principle, however, to be extracted from the cases at common law, seems to be that in order to constitute the offense of unlawful assembly, it must appear that it was a common intent of the persons assembled to attain a purpose, whether lawful or unlawful, by the commission of such acts of intimidation and disorder which are likely to produce danger to the tranquility and peace of the neighborhood, and have a natural tendency to inspire rational, firm, and courageous persons in the neighborhood with well-grounded fear of serious breaches of the public peace."

Deliberate conduct calculated to provoke violence or breach of the peace is not protected by the freedom of speech, religion, assembly, and association provisions of the Fourteenth Amendment to the United States Constitution. The City of Montgomery, Alabama, at the time the arrests in question were made had been placed under martial rule and the National Guard had been sent into the city for the purpose of helping maintain law and order. The Sheriff of Montgomery County, Alabama, was working with the National Guard Officers and cooperating with them in the unified over-all effort to prevent riots and bloodshed. The arrests were made in pursuance of a direct order from the National Guard Commanding Officer. The arrests were entirely justified under the prevailing conditions of unrest and tension and were made only after all reasonable efforts to quell the menacing riots had proved unsuccessful. There is no evidence that the arrests were made in pursuance of

any policy, practice, custom, or usage to enforce segregation of the races.

The petitioners, as part of the Freedom Ride Movement, had broadcast their intention to create agitation in Montgomery well in advance of their arrival. Extensive effort was made on their behalf to insure that a tense atmosphere would await them. This advance publicity amounted to a general broadcast of the intended agitation.

The petitioners were thus in an "explosive situation." They were arrested because a riot was threatened—a riot which they were inciting. Under the circumstances, it is apparent, that they would have been arrested whether they were at an eating place or elsewhere and regardless of their race or color.

The Supreme Court of the United States, as a matter of principle, has consistently recognized that a constitutionally protected right does not render immune actions or utterances tending to incite an immediate breach of the peace or riot, but that, when such conduct produces a clear and present danger to a substantial interest of the State, or of a serious substantive evil, it may be stopped or regulated. *Gitlow v. New York*, 268 U.S. 652, 667, 69 L.ed 1138, 1146, 45 S.Ct. 625; *Whitney v. California*, 274 U.S. 357, 374, 71 L.ed 1095, 1104, 47 S.Ct. 641.

In *Kovacs v. Cooper*, 336 U.S. 77, 93 L.ed 513, 69 S.Ct. 448, 10 ALR 2d 608, a case involving the limitation and regulation of sound trucks in public streets, the Supreme Court of the United States said:

> "Of course, even the fundamental rights of the Bill of Rights are not absolute. The *Saia* case (334 U.S. 558, 92 L.ed 1574, 68 S.Ct. 1148) recognized that in this field by stating: 'The hours and place of public

> discussion can be controlled.' It was said decades ago in an opinion of this Court delivered by Mr. Justice Holmes, *Schenck v. United States*, 249 U.S. 47, 52, 63 L.ed 470, 473, 39 S.Ct. 247, that: 'The most stringent protection of free speech would not protect a man falsely shouting fire in a theater and causing a panic. It does not even protect a man from an injunction against uttering words that may have all of the effect of force.'
>
> "Hecklers may be expelled from assemblies and religious worship may not be disturbed by those anxious to preach a doctrine of atheism. The right to speak one's mind would often be an empty privilege in a place and at a time beyond the protecting hand of the guardians of public order."

Constitutional rights involving conduct as free speech or assembly are not absolute and unlimited at all times and under all circumstances. The Constitution does not give immunity to every possible use of language and does not prevent the punishment of those who abuse constitutional freedom and does not imply the right to paralyze the means for effective protection of all the freedoms secured by the Bill of Rights, nor does the Constitution give even "Freedom Riders" the right to frustrate and defeat the discharge of those governmental duties upon the performance of which the freedom of all depends. *Toledo Newspaper Co. v. United States*, 247 U.S. 402, 62 L.ed 1186, 38 S.Ct. 560.

The essential rights of the First Amendment in some instances are subject to the elemental needs for order without which guarantees of Civil Rights to others would be a mockery. *United Public Workers v. Mitchell*, 330 U.S. 75, 95, 91 L.ed 754, 770, 67 S.Ct. 556.

The petitioners in this case used extensive publicity to attract the crowd on May 25, 1961. They asked for a mili-

tary escort to the bus station where, as they anticipated, a large and boisterous crowd was present. In the face of the imminence of a riot, the arrests were ordered. In the case of *Powers Mercantile Co, et al. v. Olson, Governor of Minnesota*, 7 F. Supp. 865, the court held that:

> "Under military rule, constitutional rights of individuals must give way to the necessities of the situation; and the deprivation of such rights, made necessary an order to restore the community to order under law, cannot be made basis for injunction or redress."

The cases cited are based on the clear and present danger doctrine—a clear and imminent danger of some substantive evil which the State has been justified in preventing. There have been many cases in which the public welfare has deemed to be more important than any individual rights. It is not necessary here to go into the question of the constitutionality of the plaintiff's action in utilizing the facilities involved. The question as it applies in this case, as we see it, is whether the arrests were made under a justifiable situation.

In *Egan v. City of Aurora*, 174 F. Supp. 794, the Court said:

> "It is likewise apparent that federal courts cannot be so overzealous in their desire to protect individual rights from State abuse that they unjustifiably deprive the States of their inherent sovereignty, also protected by the United States Constitution."

The petitioners, both in the trial of this case below, and in their petition for a writ of certiorari and argument here, have sought to inject into this case certain proceedings which occurred in the United States District Court for the Middle District of Alabama, in the case of *Lewis v. Grey-*

hound Lines, Inc., et al., totally ignoring what that same Court said in its decree on June 2, 1961 in the case of *United States v. U.S. Klans, et al.*, Civil Action No. 1718-N, 6 Race Relations Law Reporter 528, 194 F. Supp. 897. In entering a temporary restraining order in that case, Judge Johnson said as follows:

> "This is not a restraining order enjoining individuals or groups who are traveling in interstate commerce through Alabama and through this District on bona fide trips. It is only directed to and against those organizations and individuals specifically named, or other like organizations or individuals acting in concert with them or acting as their agents or attorneys, that have been and are engaging and assisting, encouraging, financing and sponsoring groups and/or individuals in traveling in interstate commerce for the specific and announced purpose of testing and demonstrating. Such action has caused and is causing an undue burden and restraint on interstate commerce, resulting here in this State in the past few weeks in disrupting schedules of interstate carriers and causing bona fide interstate passengers to be subjected to violence, threats, intimidation, and general inconvenience. While it is true that this violence is caused directly by the Klan groups and others acting in concert with them, and has been allowed by the wilful failure of the police authorities to take the usual adequate, protective measures, it is equally true that the Congress of Racial Equality, the Southern Christian Leadership Conference, Ralph D. Abernathy, F. L. Shuttlesworth, Martin Luther King, Jr., and others acting in concert with them, by their actions in financing and sponsoring and aiding and assisting such bona fide trips are directly causing an undue burden and restraint upon interstate commerce within the State of Alabama and within this district."

Thus it will be seen that the very Federal Court on which

the petitioners so heavily rely, found as a matter of fact that the petitioners, Ralph D. Abernathy and F. L. Shuttlesworth, as well as possibly others, were directly responsible for creating the situation of which they now complain.

On page 30 of their petition, the petitioners seem to imply that the State has an obligation to play nursemaid to outside agitators. On the same page they complain of the fact that the State failed to arrest the persons who poured coffee on the seats at the lunch counter. The principle is too well established to require citation of authorities that the failure to arrest and prosecute others is no excuse for the commission of a crime.

A person cannot breach the peace and then hide behind the United States Constitution on the ground that he is a traveler in interstate commerce. Although it is conceded that the four white petitioners and three of the Negro petitioners were traveling in interstate commerce, it is respectfully urged that their conduct in inciting a breach of the peace did not constitute interstate commerce. A person, by traveling across state lines, cannot thereby secure immunity from prosecution for violation of local laws. Nor is there anything in the Fourteenth Amendment or any laws enacted pursuant thereto which gives to anyone the right to come into a State to breach the peace or to unlawfully assemble.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Leslie Hall, one of the attorneys for Respondent, and a Member of the Bar of the Supreme Court of the United States, hereby certify that on the 20th day of November, 1963, I served the requisite number of copies of the foregoing brief in opposition to petition for a writ of certiorari upon Jack Greenberg, Constance Baker Motley, James M. Nabrit, III, Suite 2030, 10 Columbus Circle, New York 19, N.Y., Fred D. Gray, 34 North Perry Street, Montgomery, Alabama, Louis H. Pollak, 127 Wall Street, New Haven, Connecticut, attorneys for Petitioners, by depositing the same in the United States mail, first class postage prepaid, and properly addressed to them at their respective addresses.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 9

RALPH D. ABERNATHY, CLYDE CARTER, WILLIAM S. COFFIN, JR., JOSEPH CHARLES JONES, BERNARD S. LEE, JOHN DAVID MAGUIRE, GAYLORD B. NOYCE, FRED L. SHUTTLESWORTH, GEORGE SMITH, DAVID E. SWIFT and WYATT TEE WALKER,

Petitioners,

v.

ALABAMA.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

BRIEF FOR PETITIONERS

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IN THE

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OCTOBER TERM, 1964

NO. 9

RALPH D. ABERNATHY, CLYDE CARTER, WILLIAM S. COFFIN, JR., JOSEPH CHARLES JONES, BERNARD S. LEE, JOHN DAVID MAGUIRE, GAYLORD B. NOYCE, FRED L. SHUTTLESWORTH, GEORGE SMITH, DAVID E. SWIFT and WYATT TEE WALKER,

Petitioners,

—v.—

ALABAMA.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

BRIEF FOR PETITIONERS

Opinion Below

The opinion of the Court of Appeals of Alabama in *Abernathy* v. *Alabama* (R. 237) is reported at 155 So. 2d 586. The Court of Appeals rendered no opinion in the other ten cases but affirmed the convictions on the authority of the *Abernathy* case (R. 288, 329, 372, 666, 415, 458, 499, 541, 583, 624).

Jurisdiction

The judgment of the Court of Appeals of Alabama in each of these cases was entered on October 23, 1962 (R. 236, 288, 329, 372, 666, 415, 458, 499, 541, 583, 624). Rehearing was denied on November 20, 1962 (R. 248, 289, 330, 373, 667,

416, 459, 500, 542, 584, 625). The Supreme Court of Alabama denied certiorari on July 25, 1963 (R. 254).

The jurisdiction of this Court in each of these cases is invoked pursuant to Title 28, United States Code, Section 1257(3), petitioners having asserted below and asserting here deprivation of rights secured by the Constitution of the United States.

Statutory and Constitutional Provisions Involved

Each of these cases involves Article I, Section 8 (commerce clause) and Article VI, paragraph 2 (supremacy clause), of the Constitution of the United States. Each case also involves the First and Fourteenth Amendments.

Each petitioner was convicted under Code of Alabama, Title 14, Section 407 (1958):

> If two or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall, on conviction, be punished, at the discretion of the jury, by fine or imprisonment in the county jail, or hard labor for the county, for not more than six months.

Every petitioner except Walker was also convicted under Code of Alabama, Title 14, Section 119(1) (Supp. 1961):

> Any person who disturbs the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars ($500.00) or be sentenced to hard labor for the county for not more than twelve (12) months, or both, in the discretion of the Court.

Each case also involves Title 49, United States Code, Section 316(d):

> . . . It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: . . . .

Questions Presented

I. Were petitioners denied due process of law under the Fourteenth Amendment in that their criminal convictions for breach of the peace and unlawful assembly were based on no evidence of guilt?

II. Were petitioners' rights under the due process clause of the Fourteenth Amendment denied because their convictions for breach of the peace and unlawful assembly were based on state statutes which, as construed and applied, are vague, indefinite, and uncertain?

III. Did the arrest and conviction of petitioners on charges of breach of the peace and unlawful assembly constitute enforcement by the state of the practice of racial segregation in bus terminal facilities serving interstate commerce, thus violating petitioners' rights under the equal protection clause of the Fourteenth Amendment, the commerce clause, and 49 U. S. C. §316(d)?

IV. Were the petitioners denied their rights under the due process clause of the Fourteenth Amendment, as that clause incorporates the First Amendment's protection of freedom of expression, assembly, and religion?

V. Were the petitioners denied their rights under the supremacy clause of the Constitution in that the courts of Alabama tried and convicted petitioners on charges which a United States District Court had already determined were intended to perpetuate racial segregation?

Statement

In the spring of 1961 a wave of civil rights demonstrations known as "Freedom Rides" swept the south. Their purpose was to demonstrate to the country that Negro travelers very often did not enjoy equal rights secured by the law (R. 36, 185). The "Freedom Riders" were in a number of places greeted with violence, intimidation and arrest. Seven of the petitioners in the case at bar were "Freedom Riders" (R. 185). The remaining four petitioners sat with the seven, their friends, at a lunch counter in the Trailways Bus Terminal in Montgomery, Alabama (R. 188).

Petitioners were arrested and convicted for (1) conduct calculated to provoke a breach of the peace (Ala. Code, Tit. 14, §119(1) (Supp. 1961)) and (2) unlawful assembly (Ala. Code, Tit. 14, §407 (1958)). Five petitioners, William S. Coffin, Jr., University Chaplain of Yale University, John Maguire, Professor of Religion at Wesleyan University, Professor Gaylord Noyce of Yale University, David Swift, Professor of Religion at Wesleyan University, all of whom are white, and George Smith, law student at Yale University, a Negro, left New Haven, Connecticut for New York on May 23, 1961 (R. 180-82, 184). From New York they took a flight to Atlanta, Georgia and spent the night

in Atlanta (R. 182, 184). The following morning they took the Greyhound Bus to Montgomery, Alabama (R. 184). The five were joined in this trip by petitioners Clyde Carter and Joseph Charles Jones, theological students from North Carolina, both of whom are Negroes (R. 184). All seven arrived in Montgomery on Wednesday, May 24th (R. 184).

Upon arrival they proceeded directly to the home of petitioner Rev. Ralph D. Abernathy (R. 206). Although there was a large crowd gathered when they arrived at the Greyhound Bus Terminal, there was very little disturbance as they drove from the Terminal to his home (R. 206). The next morning, Thursday, May 25th, the seven decided to go on to Jackson, Mississippi (R. 184) and were accompanied to the Trailways Bus Terminal by petitioners Abernathy, Wyatt Walker, Fred Shuttlesworth, all ministers, and Bernard Lee, a theological student; all of these petitioners are Negroes (R. 186). By prearrangement they contacted the state military authorities before leaving (R. 143). Petitioners were escorted by heavily armed state military convoy to the rear of the Trailways Bus Terminal, where they were ushered into the white waiting room by military guards standing at the door (R. 186). Upon entering the white waiting room petitioners planning to travel to Jackson immediately went to the ticket window and purchased tickets (R. 188). Petitioner Walker went to make a phone call (R. 131). After the tickets were purchased, several of the petitioners sat down at the lunch counter located in the white waiting room (R. 188). Sheriff Mac Sim Butler thereupon arrested petitioners because he was instructed to do so by Colonel Poarch, Staff Judge Advocate, 31st Division of the Alabama National Guard (R. 91, 96).

At the time of arrest, according to Sheriff Butler, some four to five hundred persons were outside the terminal and, not counting the petitioners, approximately 30 persons were

inside—12 of whom were law enforcement officials (R. 84). Butler did not ask the petitioners to leave or to refrain from any alleged provocative conduct, nor did he hear anyone else ask the petitioners to leave (R. 103). He did not see petitioners engage in obscene, boisterous, or indecent conduct (R. 105, 106). And he knew that two previous "Freedom Rider" groups had used the facilities of the terminal without being arrested (R. 102).

On the day of the petitioners' arrests, Rev. Abernathy, along with several others, instituted an action seeking to enjoin the arrest of persons using interstate transportation facilities in Montgomery on a desegregated basis (R. 35, 36). The Attorney General of Alabama and the Circuit Solicitor for the Fifteenth Judicial Circuit (encompassing Montgomery) were defendants (R. 35). Immediately after their arrests, the other ten petitioners filed a motion to intervene in the federal court action, which was granted May 26, 1961. *Lewis* v. *Greyhound Corp.*, 199 F. Supp. 210, 213. Petitioners sought an injunction against the state court criminal proceedings arising out of their arrest, but Judge Johnson dismissed the action as to the arrests of petitioners on the ground that 28 U. S. C. §2283 "precludes the granting of such relief." He stated:

> . . . I want you to understand that the court does not find or believe that the arrest of these individuals against whom these criminal proceedings are now pending was for any purpose other than to enforce segregation. As a matter of fact, in the posture of the case, the court is of the opinion that the arrest of those individuals was for the purpose of enforcing segregation in these facilities (R. 14).

At petitioners' trial, Sheriff Butler testified that a riot had occurred when the first group of "Freedom Riders"

arrived in Montgomery, May 20, 1961. On the day following, May 21, 1961, the Governor declared martial law (R. 86). That same day a hostile, predominantly white crowd of well over a thousand persons congregated near the church of petitioner Abernathy (R. 89).

Floyd Mann, the Director of Public Safety for the State of Alabama, testified that on Saturday, May 20th, when the first group of Freedom Riders arrived, he saw fist fights between members of the press and private persons and between white and colored persons (R. 121). Between the date of the first riot and the arrest, a Negro minister was shot (R. 124). However, when the petitioners arrived at the Trailways Terminal, there were at least a hundred or more soldiers outside the terminal as well as thirty-five members of Mann's department along with several motorcycle officers of the local police department (R. 129). The Director of Public Safety was of the opinion that the crowd outside the terminal was under control at the time of the arrest (R. 130).

Colonel Poarch estimated the number of persons within the terminal at thirty-five to fifty and the crowd outside at three hundred (R. 139, 140). After the military had escorted petitioners to the terminal, he noticed three white "toughs" pouring coffee on the seats of the luncheon counter. As they were not interstate or intrastate travelers, he ordered them out of the station, but he did not arrest them even though their conduct was in his opinion, "calculated to provoke a breach of the peace" (R. 140, 147). Poarch thought it was necessary to arrest the petitioners "Because, as I have stated, the air was electric with excitement and tension, there were three hundred people outside the station who were hostile to these persons." But he admitted that he had not attempted to determine the mood of the crowd outside (R. 154).

General Graham of the Alabama National Guard ordered Colonel Poarch to order the arrest of the petitioners because they were acting contrary to community custom (R. 219). He also testified that there were several hundred military personnel on duty outside the terminal (R. 228).

After the arrest Sheriff Butler swore out a warrant and affidavit which alleged that each petitioner

> . . . did disturb the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or conduct calculated to provoke a breach of the peace in that he did come into Montgomery, Alabama, which was subject to martial rule *and did wilfully and intentionally attempt to test segregation laws and customs* by seeking service at a public lunch counter with a racially mixed group, during a period when it was necessary for his own safety for him to be protected by military and police personnel and when the said lunch counter building was surrounded by a large number of hostile citizens of Montgomery (emphasis supplied) (R. 1).

and that each petitioner

> . . . did meet with two or more persons to commit a breach of the peace or to do an unlawful act, against the peace and dignity of the State of Alabama. (*Ibid.*)

The eleven petitioners were tried and convicted on September 15, 1961, in the Court of Common Pleas of Montgomery County for both breach of the peace and unlawful assembly (R. 3). Walker was sentenced to 90 days in jail, and the others were sentenced to 15 days in jail with fines of $100 and costs (R. 594).

An appeal was taken to the Circuit Court of Montgomery County[1] where the petitioners were tried on the basis of the Solicitor's Complaint which charged that each petitioner[2]

> . . . did disturb the peace of others in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, by conduct calculated to provoke a breach of the peace, *in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group,* at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his own safety for him to be protected by military and civil police personnel (emphasis supplied), (R. 4).

and that each petitioner

> . . . did meet with two or more persons to commit a breach of the peace or to do an unlawful act, in that he did meet with two or more persons in Montgomery, Alabama, at a time when said city and county were under martial rule as a result of the outbreak of racial mob action, *for the purpose of wilfully and intentionally seeking or attempting to seek service at a public lunch counter with a racially mixed group* at which time and place the building housing said lunch counter was surrounded by a large number of hostile citizens of Montgomery, Alabama, and it was necessary for his

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[1] Under Alabama procedure, trial in the Circuit Court is de novo, and proceedings are begun by a Solicitor's Complaint (Ala. Code, Tit. 15, §363) (1958).

[2] In the Circuit Court petitioner Walker was charged only with unlawful assembly (R. 594).

> own safety for him to be protected by military and police personnel, against the peace and dignity of the State of Alabama (emphasis supplied)" (*Ibid.*).

The eleven cases were consolidated for trial, but a separate judgment was entered in each (R. 81). Each petitioner was convicted, fined $100 and sentenced to 30 days at hard labor (R. 234). Appeal was taken to the Court of Appeals of Alabama. Only the *Abernathy* record contained the transcript of trial in the Circuit Court, but pursuant to stipulation (R. 59) the Court of Appeals considered the transcript a part of the record in each of the other cases. The Court of Appeals, by a two to one decision, affirmed each judgment of conviction and rehearing was denied. Judge Cates, in dissent, stated that the State failed to prove beyond a reasonable doubt a "clear and imminent danger of breach of the peace," because there was no proof to his satisfaction that the sitting down at the lunch counter caused the crowd to gather. Nor was there any evidence of an assault upon a militiaman (R. 246). The Supreme Court of Alabama denied certiorari (R. 254).

The Trailways Bus Terminal in Montgomery is "leased by several interstate carriers including Capitol Motor Lines and is subleased by them to an 'agent,' R. E. McRae, executive official of Capitol Motor Lines. The lunch counter portion of the terminal is leased by the . . . carriers to the Interstate Co., a Delaware Corporation, which in turn leases the lunch counter portion of the terminal to Southern House, Inc., which operates the lunch counter portion of the terminal . . ." (R. 61).

Summary of Argument

The convictions of the petitioners for breach of the peace and unlawful assembly were based on no evidence of guilt. Petitioners were at all times polite, quiet, and peaceful. There is no evidence of any wrongdoing on their part. A breach of peace conviction cannot be sustained merely because hostile observers are present. As the convictions for breach of the peace must fail for lack of evidence, so too must the convictions for unlawful assembly based on the alleged breach of the peace.

The breach of the peace and unlawful assembly statutes, as construed and applied to petitioners, are unconstitutionally vague. The breach of the peace statute afforded petitioners no fair warning that it proscribed their acts. As applied to petitioners the statute punishes constitutionally protected conduct, and allows the police unfettered discretion to determine when an offense has been committed. For the same reasons the unlawful assembly statute, as construed and applied, deprives petitioners of due process of law.

The act of police and military authorities of escorting petitioners to the terminal and then arresting them without warning constitutes an entrapment.

Petitioners were arrested to enforce the state's custom of segregation. Their right to use the facilities of the terminal free of state enforced racial discrimination was protected by the commerce clause and 49 U. S. C. §316(d), as well as by the Fourteenth Amendment. Therefore the decision of the lower court cannot stand.

The conviction of the petitioners of breach of the peace and unlawful assembly conflicts with previous decisions of this Court protecting the right of freedom of expression,

assembly, and religion. The petitioners believed in the right of all persons to travel without discrimination; while peacefully expressing this belief they were arrested. Their protest is constitutionally protected and therefore their convictions must fail.

In *Lewis* v. *Greyhound Corp.*, 199 F. Supp. 210, Judge Johnson determined that petitioners were arrested to enforce the state's custom of segregation. Since that determination was made prior to the trial of the petitioners in the state Circuit Court, the state court was estopped from reaching a different conclusion.

ARGUMENT

I. Petitioners' Criminal Convictions Were Based on No Evidence of Guilt.

A. *Breach of the Peace*

The Solicitor's Complaint filed in the Circuit Court of Montgomery charged, under Title 14, Section 119(1) of the Alabama Code, that each petitioner engaged in "conduct calculated to provoke a breach of the peace, in that he did wilfully and intentionally seek or attempt to seek service at a public lunch counter with a racially mixed group. . . ". However, "It is settled beyond question that no state may require racial segregation of interstate or intrastate transportation facilities. The question is no longer open; it is foreclosed as a litigable issue." *Bailey* v. *Patterson*, 369 U. S. 31; *Boynton* v. *Virginia*, 364 U. S. 454; *Gayle* v. *Browder*, 352 U. S. 903.

The State argued that the use of the facilities by petitioners in the "explosive" situation that existed in Montgomery was an abuse of the petitioners' constitutional rights and therefore subject to criminal sanctions. It in-

troduced testimony that hostile observers presented a threat of violence (R. 117, 139), that violence had occurred within the previous week (R. 84, 85), that the air was electric with excitement (R. 141), that a few white "toughs" had poured coffee on the counter seats (R. 140), that an "outburst" was heard when petitioners sat down (R. 105), and that military and civilian authorities believed that arrests were necessary to preserve the peace (R. 141, 147). However, this evidence even when viewed most favorably to the State, did not establish that petitioners had committed a breach of the peace.

The breach of the peace statute, Tit. 14, §119(1), condemns conduct which disturbs the peace of others and is "'violent, profane, indecent, offensive or boisterous" or "calculated to provoke a breach of the peace." The State did not contend that petitioners were violent, profane, or in any way offensive (R. 105). Nor did the testimony elicited by the State support its contention that the sitting of petitioners at the lunch counter either disturbed the peace of anyone or was calculated or designed to provoke a breach of the peace.

Although violence had ensued upon the arrival of the first group of Freedom Riders on May 20th, two groups of Freedom Riders used the facilities of the Trailways terminal without interference from the police on the day before petitioners' arrests (R. 102). The petitioners were provided with an armed military escort to the terminal (R. 185). Approximately eighteen soldiers inside and over one hundred outside controlled the crowd which, under the most generous estimates, did not exceed five hundred (R. 129, 84). With the exception of an alleged "outburst" (R. 105), there was not a single incident of violence or unruly conduct outside the terminal.

In these circumstances, petitioners were justified in believing that their right to request service at the lunch counter would be protected. The record establishes without contradiction that petitioners were orderly at all times and innocent of any wrongful conduct. They were not warned to remain away from the counter. When they sat down, they were not even asked to withdraw, but were summarily arrested.

Thus the conviction of petitioners for breach of the peace is based on no evidence of guilt and *Thompson* v. *Louisville,* 362 U. S. 199, applies. Mere evidence that the presence of peaceful Negro and white persons sitting at a lunch counter might move onlookers to commit acts of violence is insufficient to support a conviction for breach of the peace. *Barr* v. *City of Columbia,* —— U. S. ——, 12 L. ed. 2d 766.

Even assuming that a volatile situation did exist, petitioners cannot be punished for the innocent assertion of fundamental constitutional rights. "[T]he possibility of disorder by others cannot justify exclusion of persons from a place if they otherwise have a constitutional right (founded upon the Equal Protection Clause) to be present." *Wright* v. *Georgia,* 373 U. S. 284, 293. See also *Cooper* v. *Aaron,* 358 U. S. 1, 27; *Buchanan* v. *Warley,* 245 U. S. 60; *Garner* v. *Louisiana,* 368 U. S. 157; cf. *Watson* v. *City of Memphis,* 373 U. S. 526, 535 ("constitutional rights may not be denied simply because of hostility to their assertion or exercise").

B. *Unlawful Assembly*

Title 14, Section 407 of the Alabama Code makes it a crime when "two or more persons meet together to commit a breach of the peace, or to do any other unlawful act. . . ." Clearly, there is no evidence that petitioners

met together to commit a breach of the peace, as that term is normally understood.[3] Petitioners were at all times orderly and did no more than exercise an undisputed constitutional right. Moreover, there is no evidence whatever of the commission of any other unlawful act. Thus the applicability of *Thompson* v. *Louisville, supra,* seems undeniable.

For the same reasons that the breach of peace conviction must fall, the convictions for unlawful assembly are vulnerable. There simply is no evidence of wrongdoing. As this Court said in *Barr* v. *City of Columbia,* —— U. S. ——, 12 L. ed. 2d 766, 769:

> . . . [T]he only possible relevant evidence which we have been able to find in the record, is a suggestion that petitioners' mere presence seated at the counter might possibly have tended to move onlookers to commit acts of violence. . . . [B]ecause of the frequent occasions on which we have reversed under the Fourteenth Amendment convictions of peaceful individuals who were convicted of breach of the peace because of acts of hostile onlookers, we are reluctant to assume that the breach-of-peace statute covers petitioners' conduct here.

See also *Garner* v. *Louisiana,* 368 U. S. 157; *Taylor* v. *Louisiana,* 370 U. S. 154; *Wright* v. *Georgia,* 373 U. S. 284.

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[3] The Alabama Court of Appeals' expansion of the meaning of "breach of the peace" is challenged *infra,* Argument II, as a denial of due process of law.

II. The Conviction of the Petitioners on the Basis of State Statutes Which, as Construed and Applied, Are Vague, Indefinite, and Uncertain, Violates the Petitioners' Rights Under the Due Process Clause of the Fourteenth Amendment.

A. *Breach of the Peace*

The breach of the peace statute which was the basis for the conviction of petitioners provides in part:

> Any person who disturbs the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace, shall be guilty of a misdemeanor . . . (Ala. Code, Tit. 14, §119(1) (Supp. 1961)).

In affirming petitioners' convictions the Alabama Court of Appeals held, "No specific intent to breach the peace is essential to a conviction for a breach of the peace. . . . Nor is it necessary to constitute the offense of a breach of the peace that the proof show the peace has actually been broken . . . (R. 245). This holding is contrary to the plain language of §119(1). No Alabama decisions were cited in support of this construction of the statute and, indeed, there were none.[4]

The Court of Appeals also held that petitioners' convictions could be sustained without any proof of "violent, profane, indecent, offensive or boisterous" conduct (R. 246). However, the phrase "conduct calculated to provoke

[4] The only Alabama case approaching a construction of the 1959 statute (Tit. 14, §119(1)) is *Mitchell* v. *State*, 41 Ala. App. 254, 130 So. 2d 198 (Ala. App. 1961), cert. denied, 130 So. 2d 205 (Ala. Sup. Ct.). In that case a conviction was reversed because the complaint, which alleged merely that the defendant engaged in "conduct calculated to provoke a breach of the peace," was held to be too vague.

a breach of the peace" is extremely difficult to define, and criminal statutes should be construed narrowly. Any interpretation of that phrase that is not closely related to the types of conduct specifically described is both unreasonable and unforeseeable.

Criminal laws must explicitly define crimes sought to be punished so as to give fair notice as to what acts are prohibited. As was held in *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453, "no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what crimes are forbidden." See also *United States* v. *L. Cohen Grocery*, 255 U. S. 81, 89; *Connally* v. *General Const. Co.*, 269 U. S. 385; *Raley* v. *Ohio*, 360 U. S. 423.

Section 119(1), as construed and applied, did not afford petitioners fair warning. Petitioners did not actually disturb the peace of others, as a sound reading of the statute would require, nor is there any proof that they intended to do so. Moreover, it was neither alleged nor proven that petitioners were "violent, profane, indecent, offensive or boisterous." Disregarding the fact that petitioners were engaged in innocent conduct, the Court of Appeals of Alabama upheld their convictions by a broad and indefinite expansion of the phrase "conduct calculated to provoke a breach of the peace."

Petitioners had no way of knowing that the statute would be extended to include their actions. The statute as narrowly drawn by the Legislature, lulled them "into a false sense of security." *Bouie* v. *City of Columbia*, —— U. S. ——, 12 L. ed. 2d 894, 899. To allow this construction of the act to cover conduct which a normal reading of it would not reveal as being violative of its provisions, would be like applying a new act retroactively.

> There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial expansion of narrow and precise statutory language. As the Court recognized in *Pierce* v. *United States,* 314 U. S. 306, 311, "judicial enlargement of a criminal act by interpretation is at war with a fundamental concept of the common law that crimes must be defined with appropriate definiteness." *Id.* at 899.

Not only did the court surprise defendants by giving the law a new and broad construction, it also gave the act an interpretation of undue elasticity. The statutory language "conduct calculated to provoke a breach of the peace" can now be used to justify conviction for entirely innocent conduct whenever others threaten to act unlawfully in response to that conduct. Where a statute is so vague and uncertain as to make criminal an utterance or an act which may be innocently said or done with no intent to induce resort to violence, a conviction under such a law cannot be sustained. *Herndon* v. *Lowry,* 301 U. S. 242.

Thus, "this case falls within the rule that a generally worded statute which is construed to punish conduct which cannot constitutionally be punished is unconstitutionally vague to the extent that it fails to give adequate warning of the boundary between the constitutionally permissible and constitutionally impermissible applications of the statute." *Wright* v. *Georgia,* 373 U. S. 284.

B. *Unlawful Assembly*

The same reasoning and authorities apply to the convictions for unlawful assembly. Count 2 of the Solicitor's Complaint charges that petitioners "did meet with two or

more persons to commit a breach of the peace or to do an unlawful act . . ." As the petitioners were charged under the alternative words of the statute, they cannot know whether the State claims that they met to commit a breach of the peace or met to commit some other unlawful act. Assuming for sake of argument, as the petitioners were convicted of a breach of the peace, that the gravamen of the crime charged to the petitioners is that they met to commit a breach of the peace, the conviction for unlawful assembly still cannot be sustained. Normally breach of the peace, as is evident from the original affidavit filed by the sheriff (R. 1) and the complete text of the breach of the peace statute in Alabama, refers to "violent, profane, indecent, offensive or boisterous conduct." There were no prior constructions of this statute which would have placed the petitioners on notice that the statute applied to innocent activity which might provoke others to unlawful acts of opposition. Certainly the text of the statute would not inform petitioners that it was subject to such a construction.

If it is assumed that the gravamen of the petitioners' crime was that they met to commit some unlawful act, then the conviction certainly must fall. At all times the acts of the petitioners were constitutionally protected and therefore not subject to criminal sanctions. The charge of meeting to commit any unlawful act fails to provide any warning that a legally and Constitutionally protected activity—sitting in an integrated group at a lunch counter—can be punished as unlawful.

If either of the statutory clauses is unconstitutionally vague, the conviction under it must be reversed for it cannot be known which part was relied upon by the trial or appellate courts. *Stromberg* v. *California,* 283 U. S. 359; *Thomas* v. *Collins,* 323 U. S. 516; *Williams* v. *North Carolina,* 317 U. S. 287.

C. *Entrapment*

Moreover, the conviction of the petitioners on both charges is further impaired by the fact that their acts were induced by the authorities. Petitioners were escorted to the terminal by the military authorities. They were allowed to purchase their tickets and to use the "white" waiting room. They were not warned that their subsequent act of using the facilities of the lunch counter would provoke the crowd outside to violence. Nor were they asked to leave the counter after they sat down. The military authorities' attitude and actions manifested absolute control of the situation both inside and outside the terminal. For the police and military authorities to induce, suggest, or tacitly approve conduct, and then deem it illegal is in the nature of an entrapment. *Sherman* v. *United States,* 356 U. S. 369. It "offends a sense of justice," *Rochin* v. *California,* 342 U. S. 165, 173, to allow prosecution to follow in such a situation. "To determine whether entrapment has been established, a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal." *Sherman* v. *United States, supra.* It is clear that in the instant case the court below has so drawn the line as to include the innocent petitioners who were at all times engaged in constitutionally protected conduct.

III. The Arrests and Convictions of Petitioners Constitute Enforcement by the State of the Practice of Racial Segregation in Bus Terminal Facilities Serving Interstate Commerce, in Violation of the Equal Protection Clause of the Fourteenth Amendment, and 49 U. S. C. §316(d), and a Burden on Commerce in Violation of the Commerce Clause.

Petitioners were arrested to enforce the state "custom" of segregation. Judge Johnson so concluded in *Lewis* v. *Greyhound Corp.*, 199 F. Supp. 210 (M. D. Ala. 1961), and the record here is clear. The testimony of Sheriff Butler and General Graham leads unquestionably to the conclusion that the law enforcement officials' act of arresting the petitioners was part and parcel of the pre-existing state practice of racial segregation. Both indicated in their testimony that the motivating factor in the decision to arrest petitioners was that the petitioners dared challenge the state "custom" of segregation.[5] And certainly it stretches

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[5] At the trial of the petitioners in the Circuit Court, Sheriff Mac Sim Butler, when asked on cross-examination whether or not he had seen the petitioners do anything, testified:

> A. Yes, sir, I did. I saw them do something that I thought might cause a riot.
>
> Q. What was it? A. They came in as a mixed crowd and immediately sat down and ordered coffee at a white lunch counter. At that time they were arrested (R. 97).

Later in the cross-examination, counsel questioned the sheriff about the warrant which was the basis of conviction of the petitioners in the lower court.

> Q. And just one other question about the warrant. You further say in this warrant he did wilfully and intentionally attempt to test the segregation laws and customs by seeking service at a public lunch counter with a racially mixed group. As the chief law enforcement officer of this county, sir, can you tell us what particular laws you had in mind, if any? A. I don't know what particular code it would be, but I am sure, lawyer, that you know our lunch stands, cafes and other places are segregated (R. 106). *(continued)*

the limits of credulity to explain the arrest of peaceful persons whereas the white "toughs" who poured the coffee on the seats of the counter were merely removed from the station without charges being brought against them.

There can be no question that petitioners were within their rights in seeking service at the bus terminal lunch counter. *Bailey* v. *Patterson*, 369 U. S. 31; *Boynton* v. *Virginia*, 364 U. S. 454; *Browder* v. *Gayle*, 352 U. S. 903; *Taylor* v. *Louisiana*, 370 U. S. 154. A state cannot require eating establishments to segregate or enforce its own policy of segregation by prosecution of those who would challenge segregation. *Peterson* v. *Greenville*, 373 U. S. 244; *Lombard* v. *Louisiana*, 373 U. S. 267. Where interstate transportation facilities are involved, the state's intrusion is particularly indefensible. As in *Wright* v. *Georgia*, the command of General Graham to arrest the petitioners was doubly a violation of petitioners' Fourteenth Amendment rights:

> It was obviously based, according to the testimony of the questioning officers themselves, upon their intention to enforce racial discrimination in the park. For this reason the order violated the Equal Protection Clause of the Fourteenth Amendment . . .

General Graham, who ordered the arrest of the petitioners, when asked why he so acted testified as follows:

> Q. What was it, General, that led you to conclude that these defendants should be arrested? A. Well, it was the act of sitting together as a group contrary to the custom, long established custom here in this community under the circumstances.
>
> Q. What custom had you in mind, General Graham? A. White people eat one place and colored eat another, which is a long established custom pretty well recognized by both parties here in Montgomery.
>
> Q. And it was the violation by these defendants of that custom? A. Under these circumstances (R. 219).

> The command was also violative of petitioners' rights because as will be seen, the other asserted basis for the order—the possibility of disorder by others—could not justify exclusion of the petitioners from the park (373 U. S. at 292).

This use of the state's machinery also conflicts with the statute forbidding discrimination in facilities operated by interstate motor carriers, 49 U. S. C. §316(d); *Boynton* v. *Virginia, supra,* and constitutes an unlawful burden on commerce in violation of Article I, Section 8 of the Constitution, *Morgan* v. *Virginia,* 328 U. S. 373.

IV. The Decision Below Conflicts With Decisions of This Court Securing the Fourteenth Amendment Right to Freedom of Expression, Assembly and Religion.

The decision below contravenes petitioners' rights of freedom of expression, assembly and religion. Their act of sitting together at the lunch counter in the Trailways Terminal, was an expression of their moral and religious belief that segregation is inconsistent with the Christian ethic (R. 183). It was an entirely peaceful demonstration of this view as well as an attempt to secure a cup of coffee. It thus falls within the protection of the First Amendment. *Garner* v. *Louisiana,* 368 U. S. 157; *Burstyn* v. *Wilson,* 343 U. S. 495; *NAACP* v. *Alabama,* 357 U. S. 449; *Thornhill* v. *Alabama,* 310 U. S. 88.

The conduct of petitioners is analogous to the acts of the defendants in *Garner* v. *Louisiana,* who were convicted of disturbing the peace for conducting a peaceful sit-in at a white lunch counter. Recognizing the breadth of the First Amendment, Justice Harlan, concurring, wrote:

> We would surely have to be blind not to recognize that petitioners were sitting at these counters, where they knew they would not be served, in order to demonstrate that their race was being segregated in dining facilities in this part of the country. Such a demonstration, in the circumstances of these two cases, is as much a part of the "free trade" in ideas . . . thought of as speech.
>
> • • • • •
>
> If the act of displaying a red flag as a symbol of opposition to organized government is a liberty encompassed within free speech as protected by the Fourteenth Amendment, *Stromberg* v. *California*, 283 U. S. 359, the act of sitting at a privately owned lunch counter with the consent of the owner, as a demonstration of opposition to enforced segregation, is surely within the same range of protections (368 U. S. at 201, 202).

And see *Edwards* v. *South Carolina*, 372 U. S. 229; *Fields* v. *South Carolina*, 375 U. S. 44; *Henry* v. *Rock Hill*, —— U. S. ——, 12 L. Ed. 2d 79.

V. The Court Below Deprived Petitioners of Due Process and Violated the Supremacy Clause by Refusing to Accept the Federal District Court Determination That Petitioners Were Arrested to Enforce Racial Segregation.

Judge Johnson, in a case involving all of the parties in this case and the incident involved here, *Lewis* v. *Greyhound Corp.*, 199 F. Supp. 210 (M. D. Ala. 1961), concluded as a matter of fact that petitioners were arrested to enforce the state's custom of segregation.[6] Although he so concluded he refused to grant petitioners' motion to enjoin the criminal prosecutions in the state courts. The state court, completely ignoring Judge Johnson's conclusion, convicted petitioners of breach of the peace and unlawful assembly. The refusal of the trial court to admit the determination by Judge Johnson that petitioners were arrested to enforce the state custom of segregation violated petitioners' rights under the due process clause of the Fourteenth Amendment, and the supremacy clause (Article VI) of the United States Constitution. If the arrest of the petitioners was to enforce the state's custom of segregation, this would be, even in the state courts, a complete defense to the charges. *Boynton* v. *Virginia, supra; Wolfe* v. *North Carolina,* 364 U. S. 177, 197 (dissenting opinion of Chief Justice Warren). The essential question is, therefore, whether or not the state courts were estopped from reaching a different conclusion as to the reason for the arrest of the petitioners.

The Restatement of Judgments, Section 68(1), on the question of collateral estoppel states: ". . . where a question of fact essential to the judgment is actually litigated

[6] The Federal Court record was introduced at trial and is a part of the record on file in this Court although it was not printed in this Court.

and determined by a valid and final judgment, the determination is conclusive between the parties in a subsequent action on a different cause of action." Nor is it important that the proceedings were criminal in nature. Although the rule was originally developed in connection with civil litigation, it has been widely used by the state and federal courts in criminal cases. See *Hoag* v. *New Jersey*, 356 U. S. 464. As was said by this Court in *Yates* v. *United States*, 354 U. S. 298, 335, "the doctrine of collateral estoppel is not made inapplicable by the fact that this is a criminal case, whereas the prior proceedings were civil in character." The judgments and decrees of a federal court are entitled to the same force and effect, so far as *res judicata* and collateral attack are concerned, as would be accorded the judgment of record of a state court under similar circumstances. *Bigelow* v. *Old Dominion Copper Co.*, 225 U. S. 111.

In *Southern Pacific Railroad* v. *United States*, 168 U. S. 1, Justice Harlan reviewed the decisions of this Court on the doctrine of *res judicata*. His opinion summarizes the governing law in this case:

> The general principle announced in numerous cases is that a right, question, or fact, distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. *Id.* at 48.

The fact that the state rather than private persons was involved is unimportant. A federal court judgment which

operates as a bar against a subsequent suit in the state court as to private parties would operate as a bar against the state as well. *Deposit Bank* v. *Board of Councilmen of Frankfort,* 191 U. S. 499.

Thus the factual determinations of the federal court in *Lewis* v. *Greyhound Corp., supra,* precluded the state court from reaching a different conclusion.

CONCLUSION

WHEREFORE, for the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

NO. 9

RALPH D. ABERNATHY, CLYDE CARTER, WILLIAM S. COFFIN, JR., JOSEPH CHARLES JONES, BERNARD S. LEE, JOHN DAVID MAGUIRE, GAYLORD B. NOYCE, FRED L. SHUTTLESWORTH, GEORGE SMITH, DAVID E. SWIFT, and WYATT TEE WALKER

Petitioners

v.

ALABAMA,

Respondent

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

BRIEF FOR RESPONDENT

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Petitioners

v.

ALABAMA,

Respondent

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

BRIEF FOR RESPONDENT

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Each petitioner was convicted under Title 14, Section 407, Code of Alabama 1940 (Recompiled 1958):

> "If two or more persons meet together to commit breach of the peace, or to do any other unlawful act, each of them shall, upon conviction, be punished, at the discretion of the jury, by a fine and imprisonment in the county jail, or hard labor for the county, for not more than six months."

Each petitioner, except Walker, was also convicted under Title 14, Section 119(1), Code of Alabama 1940 (Recompiled 1958):

> "Any person who disturbs the peace of others by violent, profane, indecent, offensive or boisterous conduct or language or by conduct calculated to provoke a breach of the peace, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than five hundred dollars ($500.00) or be sentenced to hard labor for the county for not more than twelve (12) months, or both, in the discretion of the court."

These cases also involve the freedom of expression and assembly clauses of the First Amendment to the Constitution of the United States; the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States; and the due process clause of Article 1, Section 6, Alabama Constitution of 1901.

QUESTIONS PRESENTED

I.

WHETHER PERSONS WHO, WITH FULL KNOWLEDGE OF A TENSE SITUATION, DELIBERATELY ENGAGE IN CONDUCT CALCULATED TO PROVOKE A BREACH OF THE PEACE, ARE CONSTITUTIONALLY IMMUNE FROM PROSECUTION FOR SUCH CONDUCT.

II.

WHETHER PERSONS WHO EMBARK ON AN AVOWED MISSION OF DISTURBING PEACE AND TRANQUILITY IN A COMMUNITY CAN SEEK REFUGE IN THE CONSTITUTION OF THE UNITED STATES AS

> menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions excitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious."

The principle was again well stated by Mr. Chief Justice Vinson in *Feiner v. New York*, 340 U.S. 315, 319, 95 L.Ed. 295, 299, where it was said:

> "We are not here faced with blind condonation by a State court of arbitrary police action. The trial judge had testimony supporting and contradicting the judgment of the police officers that a clear danger of disorder was threatened. After weighing this contradictory evidence, the trial court reached the conclusion that the police officers were justified in taking the action to prevent a breach of the peace. The exercise of the police officers' proper discretionary power to prevent a breach of the peace was thus approved by the trial court and later by two courts on review. The courts below recognized petitioner's right to hold a street meeting at this locality, to make use of loud-speaking equipment in giving his speech, and to make derogatory remarks concerning public officials and the American Legion. They found that the officers in making the arrest were motivated solely by a proper concern for the preservation of order and protection of the

general welfare, and that there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions. Petitioner was thus neither arrested nor convicted for making or the content of his speech. Rather, it was the reaction which it actually engendered . . . The findings of the New York courts as to the condition of the crowd and the refusal of petitioner to obey the police request, supported as they are by the record in this case are persuasive that the conviction of petitioner for violation of public peace, order and authority does not exceed the bounds of proper police action. This court respects, as it must, the interest of the community in maintaining peace and order on its streets."

In a concurring opinion appearing in 95 L.Ed. at page 280, Mr. Justice Frankfurter said of the police that.

> "They interfered only when they apprehended imminence of violence. It is not a constitutional principle that, in acting to preserve order, the police must proceed against the crowd, whatever its size or temper, and not against the speaker."

Mr. Justice Frankfurter also said at page 279 that the Supreme Court:

> ". . . should not re-examine determinations of the State courts on 'those matters which are usually termed issues of fact.' And it should not overturn a fair appraisal of facts made by State courts in the light of their knowledge of local conditions."

The same principle should govern this Court in considering the present cases.

The City of Montgomery, Alabama, at the time the arrests were made, had been placed under martial rule and the National Guard had been sent into the city for the purpose of helping to maintain law and order. The Sheriff of Montgomery County was working with the National Guard officers and cooperating with them in the unified over-all efforts to prevent riots and bloodshed. The arrests were made in pursuance of a direct order from the National Guard Commanding Officer. The arrests were entirely justified under the prevailing conditions of unrest and tension and were made only after all reasonable efforts to quell the menacing riots had proved unsuccessful. There is no evidence that the arrests were made in pursuance of any policy, practice, custom, or usage to enforce segregation of the races.

The petitioners, as part of the "Freedom Ride Movement," had broadcast their intention to create agitation in Montgomery well in advance of their arrival. Extensive efforts were made on their behalf to insure that a tense atmosphere would await them.

The petitioners were thus in an "explosive situation," one in which they had placed the explosive elements and to which they attempted to light a fuse. They were arrested because a riot was threatened—a riot which they were inciting.

The Supreme Court of the United States, as a matter of principle, has consistently recognized that a constitutionally protected right does not render immune actions or utterances tending to incite an immediate breach of the peace or riot, but that, when such conduct produces a clear and present danger to a substantial interest of the State, or of a serious substantive evil, it may be stopped or regulated. *Gitlow v. New York*, 268 U.S. 652, 667, 69 L.Ed. 1138, 1146, 45 S.Ct. 625; *Whitney v. California*, 274 U.S. 357, 374, 71 L.Ed. 1095, 1104, 47 S.Ct. 641.

In their Brief, the petitioners rely heavily on *Barr v. City of Columbia* (June 22, 1964), ... U.S. ....., 12 L.Ed.2d 766. That case is so factually distinguishable from the case at bar that it is no authority for the theory which they attempt to advance here. In *Barr*, there is no evidence of a mob assembled outside the drug store, no evidence of previous violence, no evidence of an "electric" and tense atmosphere, and no evidence of public hostility, as here.

B

UNLAWFUL ASSEMBLY

An assembly of persons together for the effectuation of even a lawful purpose, by means such as would give rational, firm, and courageous persons in the neighborhood of the assembly a well-grounded fear of a breach of the peace, is an unlawful assembly.

It is undisputed from the evidence in this case that some of the petitioners assembled together to ride buses through the State of Alabama, and to use all of the facilities which were an integral part of the bus stations, knowing full well that under the conditions then prevailing their actions in doing so would give any rational, firm, and courageous persons in the neighborhood a well-grounded fear of a breach of the peace.

Although the petitioners state in their brief that "their purpose was to demonstrate to the country that Negro travelers very often did not enjoy equal rights secured by the law" (Petitioners' Brief, page 4), it must be borne in mind that this particular ride was initiated by four white men, namely, Coffin, Maguire, Noyce, and Swift, and one Negro, Smith (R. 180-182). It is thus difficult to understand by what mental process these white theologians arrived at the conclusion that their riding buses through Alabama could

menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions excitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious."

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general welfare, and that there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions. Petitioner was thus neither arrested nor convicted for making or the content of his speech. Rather, it was the reaction which it actually engendered . . . The findings of the New York courts as to the condition of the crowd and the refusal of petitioner to obey the police request, supported as they are by the record in this case are persuasive that the conviction of petitioner for violation of public peace, order and authority does not exceed the bounds of proper police action. This court respects, as it must, the interest of the community in maintaining peace and order on its streets."

In a concurring opinion appearing in 95 L.Ed. at page 280, Mr. Justice Frankfurter said of the police that.

"They interfered only when they apprehended imminence of violence. It is not a constitutional principle that, in acting to preserve order, the police must proceed against the crowd, whatever its size or temper, and not against the speaker."

Mr. Justice Frankfurter also said at page 279 that the Supreme Court:

". . . should not re-examine determinations of the State courts on 'those matters which are usually termed issues of fact.' And it should not overturn a fair appraisal of facts made by State courts in the light of their knowledge of local conditions."

The same principle should govern this Court in considering the present cases.

The City of Montgomery, Alabama, at the time the arrests were made, had been placed under martial rule and the National Guard had been sent into the city for the purpose of helping to maintain law and order. The Sheriff of Montgomery County was working with the National Guard officers and cooperating with them in the unified over-all efforts to prevent riots and bloodshed. The arrests were made in pursuance of a direct order from the National Guard Commanding Officer. The arrests were entirely justified under the prevailing conditions of unrest and tension and were made only after all reasonable efforts to quell the menacing riots had proved unsuccessful. There is no evidence that the arrests were made in pursuance of any policy, practice, custom, or usage to enforce segregation of the races.

The petitioners, as part of the "Freedom Ride Movement," had broadcast their intention to create agitation in Montgomery well in advance of their arrival. Extensive efforts were made on their behalf to insure that a tense atmosphere would await them.

The petitioners were thus in an "explosive situation," one in which they had placed the explosive elements and to which they attempted to light a fuse. They were arrested because a riot was threatened—a riot which they were inciting.

The Supreme Court of the United States, as a matter of principle, has consistently recognized that a constitutionally protected right does not render immune actions or utterances tending to incite an immediate breach of the peace or riot, but that, when such conduct produces a clear and present danger to a substantial interest of the State, or of a serious substantive evil, it may be stopped or regulated. *Gitlow v. New York*, 268 U.S. 652, 667, 69 L.Ed. 1138, 1146, 45 S.Ct. 625; *Whitney v. California*, 274 U.S. 357, 374, 71 L.Ed. 1095, 1104, 47 S.Ct. 641.

In their Brief, the petitioners rely heavily on *Barr v. City of Columbia* (June 22, 1964), ... U.S. ....., 12 L.Ed.2d 766. That case is so factually distinguishable from the case at bar that it is no authority for the theory which they attempt to advance here. In *Barr*, there is no evidence of a mob assembled outside the drug store, no evidence of previous violence, no evidence of an "electric" and tense atmosphere, and no evidence of public hostility, as here.

B

UNLAWFUL ASSEMBLY

An assembly of persons together for the effectuation of even a lawful purpose, by means such as would give rational, firm, and courageous persons in the neighborhood of the assembly a well-grounded fear of a breach of the peace, is an unlawful assembly.

It is undisputed from the evidence in this case that some of the petitioners assembled together to ride buses through the State of Alabama, and to use all of the facilities which were an integral part of the bus stations, knowing full well that under the conditions then prevailing their actions in doing so would give any rational, firm, and courageous persons in the neighborhood a well-grounded fear of a breach of the peace.

Although the petitioners state in their brief that "their purpose was to demonstrate to the country that Negro travelers very often did not enjoy equal rights secured by the law" (Petitioners' Brief, page 4), it must be borne in mind that this particular ride was initiated by four white men, namely, Coffin, Maguire, Noyce, and Swift, and one Negro, Smith (R. 180-182). It is thus difficult to understand by what mental process these white theologians arrived at the conclusion that their riding buses through Alabama could

possibly "demonstrate to the country that Negro travelers very often did not enjoy equal rights secured by the law," even if such were a fact.

The only logical conclusion, as is evidenced by their teaming up with the Negroes, Smith, Carter, Jones, Abernathy, Shuttlesworth, Lee, and Walker was to assemble as a group in order to further aggravate an already tense situation and to provoke further breaches of the peace. Their motives being clear, as shown by their actions under the prevailing circumstances, they were thus clearly guilty of unlawful assembly.

The futility of attempting for future guidance to adopt an inflexible definition of all circumstances and conditions which might arise in the course of human events to denominate an assembly as unlawful is obvious. As was said in *State v. Butterworth*, 104 N.J.L. 579, 142 At. 57, 58 ALR 744, 748:

> "Each case largely and necessarily depends upon the object and character of the meeting, and whether or not the overt acts done by the participants therein, was pursuant to a common understanding, or of such a nature as to inspire well-grounded fear in persons of reasonable firmness and courage of a riot, rout, affray, or other breach of the public peace."

After discussing the case of *Reg. v. Graham*, 16 Cox C.C. 420, 46 Am. Jur. 128, that court went on to say:

> "The legal principle, however, to be extracted from the cases at common law, seems to be that in order to constitute the offense of unlawful assembly, it must appear that it was a common intent of the persons assembled to attain a purpose, whether

lawful or unlawful, by the commission of such acts of intimidation and disorder which are likely to produce danger to the tranquility and peace of the neighborhood, and have a general tendency to inspire rational, firm, and courageous persons in the neighborhood with well-grounded fear of serious breaches of the public peace."

Again, we say that *Barr v. City of Columbia*, ... U.S. ....., 12 L.Ed.2d 766, 769, is not applicable because the facts in that case are clearly distinguishable from the case at bar.

II.

PERSONS WHO EMBARK ON AN AVOWED MISSION OF DISTURBING PEACE AND TRANQUILITY IN A COMMUNITY CANNOT SEEK REFUGE IN THE CONSTITUTION OF THE UNITED STATES AS AGAINST THE POLICE POWER OF A STATE TO PRESERVE SUCH PEACE AND TRANQUILITY.

In *Kovacs v. Cooper*, 336 U.S. 77, 93 L.Ed. 513, 69 S.Ct. 448, 10 ALR 2d 608, a case involving the limitation and regulation of sound trucks in public streets, this Court said:

> "Of course, even the fundamental rights of the Bill of Rights are not absolute. The *Saia* case (334 U.S. 558, 92 L.Ed. 1574, 68 S.Ct. 1148) recognized that in this field by stating: 'The hours and place can be controlled.' It was said decades ago in an opinion of this Court delivered by Mr. Justice Holmes, *Schenck v. United States*, 249 U.S. 47, 52, 63 L.Ed. 470, 473, 39 S.Ct. 247, that: 'The most stringent protection of free speech would not protect a man falsely shouting fire in a theater and causing a panic. It does not even protect a man from an in-

junction against uttering words that may have all of the effect of force.'

"Hecklers may be expelled from assemblies and religious worship may not be be disturbed by those anxious to preach a doctrine of atheism. The right to speak one's mind would often be an empty privilege in a place and at a time beyond the protecting hand of the guardians of public order."

Constitutional rights of assembly are not absolute and unlimited at all times and under all circumstances. The Constitution does not give immunity to and does not prevent the punishment of those who abuse constitutional freedoms and does not imply the right to paralyze the means for effective protection of all the freedoms secured by the Bill of Rights, nor does the Constitution give so-called "Freedom Riders" the right to frustrate and defeat the discharge of those governmental duties upon the performance of which the freedom of all depends. *Toledo Newspaper Co. v. United States*, 247 U.S. 402, 62 L.Ed. 1186, 38 S.Ct. 560.

The essential rights of the First Amendment in some instances are subject to the elemental needs for order without which guarantees of Civil Rights of others would be a mockery. *United Public Workers v. Mitchell*, 330 U.S. 75, 95, 91 L.Ed. 754, 770; 67 S.Ct. 556.

In the case of *Powers Mercantile Co., et al. v. Olson, Governor of Minnesota*, 7 F.Supp. 865, the Court held that:

"Under military rule, constitutional rights of individuals must give way to the necessities of the situation; and the deprivation of such rights, made necessary in order to restore the community to order under law, cannot be made the basis for injunction or redress."

Under the clear and present danger doctrine—a clear and imminent danger of some substantive evil—the State was justified in taking preventive action.

It is not a question of the constitutionality of petitioners' actions in utilizing the facilities involved. The question is whether the arrests were made under a justifiable situation.

III.

IT IS NOT IN THE INTEREST OF THE COMMON WEAL TO PERMIT INTERLOPERS TO DISTURB PEACE AND GOOD ORDER, BY WAY OF "DEMONSTRATIONS," WITHOUT RESORT TO THE COURTS FOR THE VINDICATION OF THEIR CLAIMED "RIGHTS" UNDER THE CONSTITUTION.

Of the eleven petitioners who were arrested and convicted, seven were participants in the "Freedom Ride."

Coffin was the University Chaplain at Yale University; Maguire and Swift were Professors of Religion at Wesleyan University; Noyce was a Professor at Yale University; Smith was a student at Yale Law School; and Carter and Jones were theological students from North Carolina (R. 180 - 184).

It is obvious from the testimony of their spokesman, Coffin, that the traveling petitioners were not bona fide travelers in interstate commerce, but were traveling solely for the purpose of "demonstrating" in an area which was already in a tense situation and where matters were already at a fever pitch, of which they were well aware before they undertook the trip and which they further aided, abetted, and encouraged by their advance publicity. Their sole and only purpose then could be nothing other than to add fuel to a fire which the authorities were doing everything in their

possibly "demonstrate to the country that Negro travelers very often did not enjoy equal rights secured by the law," even if such were a fact.

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ganized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses." *Cox v.* [*State of*] *New Hampshire*, supra [312 U.S. 569] at 574 [61 S.Ct. 762, 85 L.Ed. 1049].'

"The activity of the Congress of Racial Equality representatives and those acting in concert with them in this district and within this State, the activity of the Southern Christian Leadership Conference representatives and those acting in concert with them in this district and within this State, the Student Nashville Non-Violent Movement and those acting in concert with them, individuals F. L. Shuttlesworth, Ralph D. Abernathy, Solomon S. Seay, Sr., Martin Luther King, Jr., Wyatt Tee Walker, and those acting in concert with these individuals in sponsoring, encouraging, assisting and publicizing the so-called 'Freedom Riders,' or other like groups who are presently engaged in 'agitating within the law,' is just as effectively causing an undue burden and restraint upon the free flow of interstate Commerce in this State and district as is the activity of the other defendants in this case. All are due to be enjoined and/or restrained from such further activities that produce this evil result."

Thus, it will be seen that the very Federal Court on which the petitioners so heavily rely found as a fact that the petitioners, Abernathy, Shuttlesworth, and Walker, as well as possibly others, including Martin Luther King, Jr., who encouraged these riders (see R. 200) were directly responsible for creating the situation of which they now complain.

We respectfully submit that it is foreign to our American system to throw a cloak of constitutional protection around those who think they can pick and choose the laws which they must obey.

CONCLUSION

WHEREFORE, for the foregoing reasons, the judgments below should be affirmed.

Respectfully submitted,

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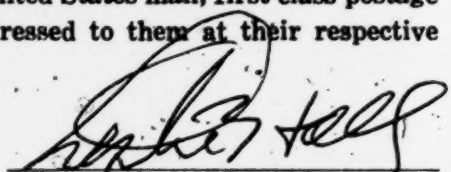
CERTIFICATE OF SERVICE

I, Leslie Hall, one of the attorneys for the Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 23rd day of September, 1964, I served the requisite number of copies of the foregoing brief upon Jack Greenberg, Constance Baker Motley, James M. Nabrit, III, Suite 2030, 10 Columbus Circle, New York, New York 10019, Fred D. Gray, 34 North Perry Street, Montgomery, Alabama, and Louis H. Pollak, 127 Wall Street, New Haven, Connecticut, Attorneys for Petitioners, by depositing the same in the United States mail, first class postage prepaid, and properly addressed to them at their respective addresses.



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